



~~April 18, 2006 CPC~~  
~~May 16, 2006 CPC~~  
~~June 20, 2006 CPC~~  
~~July 26, 2006 BS~~  
~~August 23, 2006 BS~~  
~~October 25, 2006 BS~~  
~~December 13, 2006 BS~~  
~~February 20, 2007 CPC~~  
~~April 17, 2007 CPC~~  
~~May 15, 2007 CPC~~  
June 27, 2007 BS

STAFF'S  
REQUEST ANALYSIS  
AND  
RECOMMENDATION

06SN0234  
(AMENDED)

Robert Sowers

Matoaca Magisterial District  
Alberta Smith Elementary; Bailey Bridge Middle; and Manchester High Schools Attendance  
Zones  
North and south lines of Quailwood Road

- REQUESTS: I. Rezoning from Agricultural (A) to Residential (R-12) with Conditional Use Planned Development to permit exceptions to Ordinance requirements.
- II. Waiver to street connectivity requirements to Quailwood Road.

PROPOSED LAND USE:

A mixture of residential uses, to include single family, condominiums and cluster homes, along with supporting recreational uses is planned. The applicant has agreed to limit development to a density of 2.2 dwelling units per acre, yielding approximately 484 dwelling units. (Proffered Condition 6)

PLANNING COMMISSION RECOMMENDATION

RECOMMEND APPROVAL OF REZONING WITH CONDITIONAL USE PLANNED DEVELOPMENT AND ACCEPTANCE OF THE PROFFERED CONDITIONS ON PAGES 2 THROUGH 6. RECOMMEND APPROVAL OF THE WAIVER TO STREET CONNECTIVITY REQUIREMENTS TO QUAILWOOD ROAD.

## STAFF RECOMMENDATION

Request I: Recommend approval of the rezoning for the following reasons:

- A. The proposed zoning and land uses conform to the Upper Swift Creek Plan which suggests the property is appropriate for single family residential use of 2.2 units per acre or less.
- B. The proffered conditions adequately address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan. Specifically, the needs for roads, schools, parks, libraries and fire stations is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program, and the impact of this development is discussed herein. The proffered conditions mitigate the impact on capital facilities, thereby insuring adequate service levels are maintained and protecting the health, safety and welfare of County citizens.

Request II: Recommend denial of the waiver to street connectivity requirement to Quailwood Road for the following reason:

The evaluation of the Policy criteria for granting such relief necessitates design details that can best be provided through the subdivision review process.

(NOTE: CONDITIONS MAY BE IMPOSED OR THE PROPERTY OWNER(S) MAY PROFFER CONDITIONS. THE CONDITIONS NOTED WITH “STAFF/CPC” WERE AGREED UPON BY BOTH STAFF AND THE COMMISSION. CONDITIONS WITH ONLY A “STAFF” ARE RECOMMENDED SOLELY BY STAFF. CONDITIONS WITH ONLY A “CPC” ARE ADDITIONAL CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION.)

### PROFFERED CONDITIONS

The property owners and applicant in this rezoning case, pursuant to Section 15.2-2298 of the Code of Virginia (1950 as amended) and the Zoning Ordinance of Chesterfield County, for themselves and their successors or assigns, proffer that the property under consideration will be developed according to the following proffers if, and only if, the rezoning request submitted herewith is granted with only those conditions agreed to by the owners and applicant. In the event this request is denied or approved with conditions not agreed to by the owners and applicant, the proffers shall immediately be null and void and of no further force or effect.

- (STAFF/CPC)      1.      Master Plan. The Textual Statement dated March 19, 2007 shall be the Master Plan. (P)

- (STAFF/CPC) 2. Timbering. Except for the timbering approved by the Virginia State Department of Forestry for the purpose of removing dead or diseased trees, there shall be no timbering on the Property until a land disturbance permit has been obtained from the Environmental Engineering Department and the approved devices have been installed. (EE)
- (STAFF/CPC) 3. Utilities. The public water and wastewater systems shall be utilized. (U)
- (STAFF/CPC) 4. Cash Proffer. In addition to the Transportation Contribution described in Proffered Condition 11, the applicant, builder, subdivider, developer or assignee(s) (the "Applicant") shall pay the following to the County of Chesterfield prior to the issuance of each building permit for infrastructure improvements within the service district for the property:
- a. If payment is made prior to July 1, 2007, \$6,685.00 per dwelling unit. At time of payment, the \$6,685.00 will be allocated pro-rata among the facility costs as follows: \$602.00 for parks and recreation, \$348.00 for library facilities, \$5,331.00 for schools, and \$404.00 for fire stations; or
  - b. If payment is made after June 30, 2007 the amount approved by the Board of Supervisors not to exceed \$6,685.00 per dwelling unit pro-rated as set forth in Proffered Condition 4.a. above adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2006 and July 1 of the fiscal year in which the payment is made.
  - c. Provided, however, that if any building permits issued on the property are for senior housing, as defined in the proffer on age-restriction, the Applicant shall pay, in addition to the Transportation Contribution described in Proffered Condition 11, \$1,354.00 per dwelling unit if paid prior to July 1, 2007, or the amount approved by the Board of Supervisors, not to exceed \$1,354.00 per dwelling unit as adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2006 and July 1 of the fiscal year in which the payment is made if paid after June 30, 2007. At the time of payment, the \$1,354.00 will be allocated pro-rata among the facility costs as follows: \$602.00 for parks and recreation, \$348.00 for library facilities, and \$404 for fire stations. Payments in excess of \$1,354.00 shall be prorated as set forth above.

- d. Cash proffer payments shall be spent for the purposes proffered or as otherwise permitted by law.

Should Chesterfield County impose impact fees at any time during the life of the development that are applicable to the property, the amount paid in cash proffers shall be in lieu of or credited toward, but not in addition to, any impact fees, in a manner as determined by Chesterfield County. (B&M)

- (STAFF/CPC) 5. Age Restriction. Except as otherwise prohibited by the Virginia Fair Housing Law, the Federal Fair Housing Act, and such other applicable federal, state or local legal requirements, dwelling units designated as age-restricted shall be restricted to “housing for older persons” as defined in the Virginia Fair Housing Law and no persons under 19 years of age shall reside therein. Any lots for age-restricted dwelling units shall be grouped together on a particular portion of the Property and shall not be scattered among other residential units. At the time of recordation of a subdivision plat or the approval of any site plan, the lots shall be noted as age-restricted. Any site plan for age-restricted dwelling units shall also note the restriction. (B&M)
- (STAFF/CPC) 6. Density. The total number of residential dwelling units on the Property shall not exceed 2.2 residential units per acre. (P)
- (STAFF/CPC) 7. Elevations Incident to Dam Inundation Area. The lowest ground elevation at the foundation of homes shall be at or above the dam failure limits. (EE)
- (STAFF/CPC) 8. No Sole Access. At the time of complete development, no lots shall have sole vehicular access through Spring Trace or Cameron Bay Subdivisions. (P)
- (STAFF/CPC) 9. Right of Way Dedication. In conjunction with recordation of the initial subdivision plat, a seventy (70) foot wide right-of-way for a north/south collector (the “Collector”) from Holly View Parkway to the northern property line shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County. The exact location of this right-of-way shall be approved by the Transportation Department. (T)
- (STAFF/CPC) 10. Access Plan. Prior to any tentative subdivision approval, an access plan for the Collector shall be submitted to and approved by the Transportation Department. Vehicular access from the property to the Collector shall conform to the approved access plan. (T)



(STAFF/CPC)

11. Transportation Contribution. The Applicant shall pay to Chesterfield County prior to the issuance of each building permit the amount of \$8,915.00. If these amounts are paid after June 30, 2007, the amount paid shall be adjusted upward by any board of Supervisors' approved increase in the Marshall and Swift Building Cost Index between July 1, 2006 and July 1 of the fiscal year in which the payment is made.

- a. The Transportation Contribution shall be used to construct the road improvements described in Proffered Condition 12.c. (the "Bridge") or if not constructed, as may otherwise be permitted by law. For purposes of this proffer, the costs to construct the Bridge shall include, but not be limited to, the cost of right-of-way acquisition, costs of relocating utilities and actual costs of construction (including labor, materials, engineering, cost of wetlands/stream mitigation and overhead) ("Work") all of which shall be approved in writing by the Transportation Department before any Work is performed.
- b. During construction of the Bridge by the Applicant and upon receiving written request(s) for payment from the Applicant with supporting documentation of the Work completed by the Applicant, as determined by the Transportation Department, Chesterfield County shall periodically make payments, subject to appropriation of funds, to the Applicant that had the Work performed or credit against the future cash proffer payment for costs of the Work so long as the total payments and/or credits are not greater in value than that which has been collected in Transportation Contributions or the cost of the Work completed, whichever is less. Such payments shall be made within thirty (30) days of receipt of a request with the required documentation and will be made no more frequently than once per month. (T)

(STAFF/CPC)

12. Transportation Improvements. To provide an adequate roadway system, the Applicant shall be responsible for the following:

- a. Construction of additional pavement along Bailey Bridge Road at Holly View Parkway to provide left and right turn lanes.
- b. Construction of a two-lane road for the Collector, to VDOT Urban Collector (40 MPH) standards with modifications approved by the Transportation Department, from the current terminus of Holly View Parkway, north through the

property to the Resource Protection Area (“RPA”) of Swift Creek.

- c. Construction of a two-lane road for the Collector, to VDOT Urban Collector (40 MPH) standards with modifications approved by the Transportation Department, from the southern RPA line of Swift Creek on the property to Brad McNeer Parkway, including: i.) additional pavement along the Collector to provide a three-lane typical section (i.e., one (1) southbound lane and two (2) northbound lanes) at its intersection with Brad McNeer Parkway. The exact length of this improvement, which is approximately 1,000 feet, shall be approved by the Transportation Department; ii) additional pavement along Brad McNeer Parkway at the Collector intersection to provide left and right turn lanes; and iii) traffic signalization of the Brad McNeer Parkway/Collector intersection, if warranted as determined by the Transportation Department.
- d. Construction of right and left turn lanes along the Collector at each approved access, if warranted based on Transportation Department standards.
- e. Dedication to Chesterfield County, free and unrestricted, of any additional right-of-way (or easements) required for the improvements identified above. In the event the Applicant is unable to acquire the “off-site” right-of-way that is necessary for the road improvements described in Proffered Conditions 12.a. and c., the Applicant may request, in writing, that the Chesterfield County acquire such right-of-way as a public road improvement. All costs associated with the acquisition of the right-of-way shall be borne by the Applicant but reimbursed as set forth in Proffered Condition 11. In the event Chesterfield County chooses not to assist the Applicant in acquisition of the “off-site” right-of-way, the Applicant shall be relieved of the obligation to acquire the “off-site” right-of-way and shall provide the road improvements within available right-of-way as determined by the Transportation Department. (T)

(STAFF/CPC)

- 13. Phasing Plan. Prior to any construction plan approval, a phasing plan for the required road improvements as identified in Proffered Condition 12, shall be submitted to and approved by the Transportation Department. The approved phasing plan shall require that prior to recordation of more than a cumulative total of two hundred (200) lots the road improvements described in Proffered Conditions 12.a., b., and c. shall be completed, as determined by the Transportation Department. (T)

## GENERAL INFORMATION

### Location:

North and south lines of Quailwood Road, west of Bailey Bridge Road and also the north line of Holly View Parkway. Tax IDs 732-672-9726 and 733-673-8753.

### Existing Zoning:

A

### Size:

220.2 acres

### Existing Land Use:

Single family residential or vacant

### Adjacent Zoning and Land Use:

North - R-7, O-2 and A; Single family residential, multifamily residential or vacant  
South - A; Single family residential or vacant  
East - A and R-9; Single family residential or vacant  
West - R-9 and R-12; Single family residential

## UTILITIES

### Public Water System:

There is an existing twelve (12) inch water line extending along a portion of Brad McNeer Parkway, adjacent to the “Terraces at Swift Creek”, that terminates approximately 850 feet north of the request site. In addition, a small section of eight (8) inch water line stubs out along Quailwood Road at Village School Lane, adjacent to the eastern edge of this site. There is an existing eight (8) inch water line extending along a portion of Holly View Parkway, which terminates approximately 850 feet southwest of this site and an eight (8) inch water line along Holly Bark Drive, which terminates adjacent to the western boundary of this site. Some water system improvements may be necessary with the development of this site. Depending on the fire flow requirements of this development and to improve water quality by eliminating existing dead end lines, connection will be required to the existing water lines mentioned above, as well as possibly extending an appropriately sized water line along Quailwood Road to connect to the existing sixteen (16) inch water line along Bailey Bridge Road. Further evaluation of the existing water system in this area will be necessary. Use of the public water system is recommended by the Upper Swift Creek Plan. Use of the public water system is intended. (Proffered Condition 3)

Per Utilities Department Design Specifications (DS-21), wherever possible, two (2) supply points shall be provided for subdivisions containing more than twenty-five (25) lots. Dam failure analysis of Swift Creek downstream of the existing Swift Creek Reservoir Dam indicates that the maximum flood elevation for a dam failure is 188 feet for the most upstream portion of the request site, and 186 feet for the furthest downstream portion of this site.

#### Public Wastewater System:

This site is within the Swift Creek drainage basin. A thirty (30) inch wastewater trunk line extends along Swift Creek, adjacent to this site. In addition, an eight (8) inch wastewater collector line extends across the western most portion of the request site to serve Spring Trace Subdivision and Deer Run. Use of the public wastewater system is recommended by the Upper Swift Creek Plan. Use of the public wastewater system is intended. (Proffered Condition 3)

### ENVIRONMENTAL

#### Drainage and Erosion:

Approximately sixty (60) percent of the subject property drains to the north and northwest directly into Swift Creek below Swift Creek Reservoir Dam. The remaining portion of the property drains west to Deer Run and then via Deer Run a short distance to Swift Creek. There are currently no known on-site drainage or erosion problems and none are anticipated after development.

The property is currently wooded and, as such, should not be timbered without obtaining a land disturbance permit from the Department of Environmental Engineering (Proffered Condition 2). This will ensure that adequate erosion controls are in place prior to timbering.

Swift Creek Reservoir Dam falls under the State Dam Safety Program and, as such, a dam break analysis was required and the elevations are available through the Utilities Department. So as not to jeopardize the class of the dam or increase notifications of a pending problem, all single family dwellings constructed downstream of the dam must be one foot above the dam break elevation at the lowest outside ground level of the proposed house. (Proffered Condition 7)

### PUBLIC FACILITIES

The need for fire, school, library, park and transportation facilities is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program.

### Fire Service:

The Public Facilities Plan indicates that fire and emergency medical service (EMS) calls are expected to increase forty-four (44) to seventy-eight (78) percent by 2022. Six (6) new fire/rescue stations are recommended for construction by 2022 in the Plan. In addition to the six new stations, the Plan also recommends the expansion of five (5) existing stations. Based on 484 dwelling units, this request will generate approximately 112 calls for fire and emergency medical service each year. The applicant has addressed the impact on fire and EMS. (Proffered Condition 4)

Clover Hill Fire Station, Number 7, currently provides fire protection and emergency medical service. When the property is developed, the number of hydrants, quantity of water needed for fire protection, and access requirements will be evaluated during the plans review process.

The applicant has requested not to make a street connection to Quailwood Road. In addition to this connection possibly being required to satisfy ordinance requirements for the number of access points into this proposed development, in an emergency situation, this connection would benefit both the applicant's project and the surrounding developments. The Fire Department continues to support connectivity between subdivisions so that multiple access points are available to assist in an emergency response.

### Schools:

Approximately 257 students will be generated by this development. Currently this site lies in the Alberta Smith Elementary School attendance zone: capacity - 674, enrollment - 743; Bailey Bridge Middle School zone: capacity - 1,521, enrollment - 1,563; and Manchester High School zone: capacity - 2,107, enrollment - 2,149. The enrollment is based on September 29, 2006 and the capacity is as of 2006-2007. This request will have an impact on the elementary, middle and high schools. There are currently eight (8) trailers at Alberta Smith Elementary and five (5) trailers at Manchester High.

Tomahawk Creek Middle School is scheduled to open in the fall of 2008 and will provide relief for schools in this area of the County. This area of the County continues to experience growth and these schools will provide much needed space.

This case, combined with other tentative residential developments and zoning cases in the zones, would continue to push these schools to capacity. This case could necessitate some form of relief in the future. The applicant has addressed the impact of the development on school facilities. (Proffered Condition 4)

### Libraries:

Consistent with the Board of Supervisors' policy, the impact of development on library services is assessed countywide. Based on projected population growth, Public Facilities Plan identifies a need for additional library space throughout the County.

Development could affect either the existing Clover Hill Library or a proposed new facility in the vicinity of Beach and Winterpock Roads. The Plan identifies a need for additional library space in this area. The applicant has addressed the impact of the development on library facilities. (Proffered Condition 4)

### Parks and Recreation:

The Public Facilities Plan identifies the need for three (3) new regional parks, seven (7) community parks, twenty-nine (29) neighborhood parks and five (5) community centers by 2020. In addition, the Public Facilities Plan identifies the need for ten (10) new or expanded special purpose parks to provide water access or preserve and interpret unique recreational, cultural or environmental resources. The Plan identifies shortfalls in trails and recreational historic sites. The applicant has offered measures to assist in addressing the impact of this proposed development on these parks and recreational facilities. (Proffered Condition 4)

### Transportation:

The property (220.2 acres) is currently zoned Agricultural (A), and the applicant is requesting rezoning to Residential (R-12). The applicant has proffered a maximum density of 2.2 residential units per acre, which allows 484 units to be developed on the property (Proffered Condition 6). Based on single-family trip rates, development could generate approximately 4,440 average daily trips. These vehicles will be initially distributed along Bailey Bridge Road, which had a 2005 traffic count of 12,144 vehicles per day, and along Brad McNeer Parkway.

The Thoroughfare Plan identifies a proposed north/south collector (the "Collector Road") with a recommended right of way width of seventy (70) feet extending from Holly View Parkway, north across Swift Creek to Brad McNeer Parkway. Constructing the Collector Road across Swift Creek will require a substantial structure, a bridge. In conjunction with development north of Swift Creek, a right of way for the Collector Road was dedicated, but the road was not constructed. The alignment of the proposed Collector Road extends through the subject property. The centerline of Swift Creek forms the northern boundary of the subject property. The applicant has proffered to dedicate right of way through the property and construct a two-lane road for the Collector Road from its current terminus to Brad McNeer Parkway. (Proffered Conditions 9 and 12.B)

Access to collectors, such as the Collector Road, should be controlled. The applicant has proffered that an access plan will be submitted, at time of tentative subdivision review for Transportation Department review and approval, which shows access from the property

to the Collector Road (Proffered Condition 10). Access to the Collector Road will be based on the approved access plan.

The property has potential access through four (4) stub road rights-of-way; Holly Bark Drive, Holly View Parkway, Quailwood Road, and a planned stub road right-of-way (Cameron Bay Drive) in the Cameron Bay Subdivision. Included in the Subdivision Ordinance is the Planning Commission's Stub Road Policy. The Policy suggests that subdivision streets anticipated to carry 1,500 VPD or more should be designed as "no-lot frontage" collector roads. Holly View Parkway and Cameron Bay Drive are considered collector roads. Qualwood Road is a narrow roadway with poor vertical alignment. Any development with access to Qualwood Road would require substantial reconstruction of that road. These improvements would necessitate acquisition of off-site right-of-way. At time of tentative subdivision plat review, staff will evaluate the proposed road network and provide specific recommendations per the Stub Road Policy.

The traffic impact of this development must be addressed. The applicant has proffered: 1) construction of the Collector Road through the property to Brad McNeer Parkway; 2) construction of turn lanes along Bailey Bridge Road at the Holly View Parkway intersection, along Brad McNeer Parkway at the Collector Road intersection and along the Collector Road at each approved access based on Transportation Department standards; and 3) traffic signalization of the Brad McNeer Parkway/Collector Road intersection, if warranted (Proffered Condition 12). The applicant has proffered that a phasing plan for these road improvements will be submitted, at time of tentative subdivision review, for Transportation Department review and approval (Proffered Condition 13). According to Proffered Condition 13, the approved phasing plan will require the turn lanes along Bailey Bridge Road at the Holly View Parkway intersection and the Collector Road through the property to Brad McNeer Parkway to be completed prior to recordation of more than 200 lots.

Acquisition of "off-site" right-of-way may be necessary to construct the turn lanes along Bailey Bridge Road and to construct the Collector Road north of Swift Creek. According to Proffered Condition 12, if the developer needs off-site right-of-way for these proffered road improvements and is unable to acquire it, the developer may request the county to acquire the right-of-way as a public road improvement. If the county chooses not to assist with the right-of-way acquisition, the developer will not be obligated to acquire the off site right-of-way, and will only be obligated to construct road improvements within available right-of-way. (Proffered Condition 12.E)

Area roads need to be improved to address safety and accommodate the increase in traffic generated by this development. Bailey Bridge Road will be directly impacted by development of this property. Sections of Bailey Bridge Road, between Claypoint Road and Deer Run Drive, have nineteen (19) to twenty-one (21) foot wide pavement with minimal shoulders, and substandard horizontal and vertical curves. The capacity of that section of Bailey Bridge Road is at capacity (Level of Service E) for the volume of traffic it carries (12,144 VPD).

The applicant has proffered to contribute cash, in an amount consistent with the Board of Supervisors' Policy, towards mitigating the traffic impact of the development (Proffered Condition 11). As development continues in this part of the county, traffic volumes on area roads will substantially increase. Cash proffers alone will not cover the cost of the improvements needed to accommodate the traffic increases. The current Six-Year Improvement Plan includes a project to reconstruct, as a two-lane road, Bailey Bridge Road from Claypoint Road to Manchester High School. This project is scheduled for construction in Summer 2010, but could be delayed based on State funding.

Proffered Condition 11 requires the applicant to pay prior to issuance of each building permit, the amount of \$8,915 for road improvements (Proffered Condition 11). Proffered Condition 11 allows the developer to receive reimbursements from these payments or credit against future cash proffer payment for construction, including the cost of any necessary right of way acquisition for the Collector Road north of the resource protection area (RPA) on the property, across Swift Creek to Brad McNeer Parkway. The Transportation Department supports the use of these transportation contributions for construction of the Collector Road from the RPA for Swift Creek on the property to Brad McNeer Parkway.

At time of tentative subdivision plat review, specific recommendations will be provided regarding, among other things, access, the proposed internal street network and providing stub road rights-of way to adjacent properties.



Financial Impact on Capital Facilities:

		PER UNIT
Potential Number of New Dwelling Units	484*	1.00
Population Increase	1316.48	2.72
Number of New Students		
Elementary	112.77	0.23
Middle	62.92	0.13
High	81.80	0.17
TOTAL	257.49	0.53
Net Cost for Schools	2,588,432	5,348
Net Cost for Parks	292,336	604
Net Cost for Libraries	168,916	349
Net Cost for Fire Stations	196,020	405
Average Net Cost for Roads	4,327,928	8,942
TOTAL NET COST	7,573,632	15,648

\*Based on a proffered maximum of 2.2 residential units per acre (Proffered Condition 6). The actual number of units and the corresponding impact may vary.

The need for schools, parks, libraries, fire stations, and transportation facilities in this area is identified in the County's adopted Public Facilities Plan, Thoroughfare Plan, and Adopted Capital Improvement Program and further detailed by specific departments in the applicable sections of this request analysis.

As noted, this proposed development will have an impact on capital facilities. Staff has calculated the fiscal impact of every new dwelling unit on schools, roads, parks, libraries, and fire stations at \$15,648 per unit. The applicant has been advised that a maximum proffer of \$15,600 per unit would defray the cost of the capital facilities necessitated by this proposed development. The applicant has been further advised that a maximum proffer of \$10,269 per dwelling unit would defray the cost of the age-restricted portion of the proposed development, as it will not have an increased impact on school facilities.

The applicant has offered cash to offset the impact of the proposed development on schools, parks, libraries and fire stations (Proffered Condition 4). To mitigate the proposed development's impact on road facilities, the applicant has offered a transportation contribution for construction of a bridge or other improvements, as permitted by law (Proffered Condition 4). The proffers, as offered in this case, adequately address the impact of this proposed development on capital facilities.

Note that circumstances relevant to this case, as presented by the applicant, have been reviewed and it has been determined that it is appropriate to accept the maximum cash proffer in this case.

## LAND USE

### Comprehensive Plan:

Lies within the boundaries of the Upper Swift Creek Plan which suggests the property is appropriate for single family residential use of 2.2 units per acre or less. The Plan is currently being revised. The draft Plan, as recommended by the Planning Department, is consistent with the aforementioned recommendation of the current Plan for this property.

### Area Development Trends:

Surrounding properties to the east and west are zoned for residential uses as part of the Cameron Bay , Spring Trace, Mockingbird and Harbour Green developments. Property to the north is zoned Corporate Office (O-2) as part of a mixed use development and is currently developed for multifamily uses or is vacant. Properties to the south are zoned Agricultural (A) and are occupied by single family dwellings or are currently vacant. It is anticipated that residential development will continue in this area of Bailey Bridge Road at densities suggested by the Plan.

### Site Design:

The 220.2 acre tract proposed for R-12 zoning may be developed for condominiums, cluster homes and/or single family residential uses, all of which are discussed in further detail herein. If the property is developed for two (2) or more dwelling types, the Textual Statement requires the submission of a conceptual plan to either the Planning Commission or Planning Department for approval. At the time of review of a conceptual plan, conditions may be imposed to insure land use compatibility and transition. (Textual Statement 1)

### Density:

A maximum of 2.2 dwelling units per acre has been proffered, yielding an overall maximum of 484 dwelling units. (Proffered Condition 6)

### Condominiums:

For any condominium development, density would be limited to six (6) units per acre (Textual Statement 4). Other standards address units per building, building height, architectural treatment, lot coverage and setbacks, as well as provisions for sidewalks, buffers, recreational facilities, focal point, street trees and garage treatment. (Textual Statement 3 and 5 through 19)

The requirements offered for condominium projects are consistent with those typically required by the Commission and Board on similar projects recently approved.

Cluster Homes:

Cluster homes are proposed on individual lots having a minimum of 6,000 square feet. The density for any cluster development would be limited to six (6) units per acre. Other standards include architectural treatment, setbacks, provision of sidewalks, buffers, focal point, street trees, paved driveways and garage treatment. (Textual Statement 20 through 29)

The requirements offered for cluster projects are consistent with those typically required by the Commission and Board on similar projects recently approved.

Single Family Residential:

Single family residential uses would be required to be developed in accordance with Ordinance requirements for Residential (R-12) Districts. The minimum lot size would be 12,000 square feet. Conditions address minimum dwelling sizes. (Textual Statement 30)

The Textual Statement would require the recordation of restrictive covenants for any residential development, other than cluster and condominium uses. It should be noted that the County will only insure the recordation of the covenants and will not be responsible for their enforcement. Once the covenants are recorded, they can be changed. (Textual Statement 32)

Recreation Areas and Open Space:

The applicant has agreed to provide a minimum of 1.5 acres of recreation area within, or conveniently accessible to, each condominium development. Within each of the condominium and cluster home developments, a minimum of .75 acres of open space would be located as a focal point. The applicant may also provide active and passive recreation areas within any portion of the development. The Textual Statement provides for restrictions to minimize the impact of these recreational uses on surrounding residential uses. (Textual Statement 31)

Within the cluster home developments, where lot areas are reduced below the minimum 12,000 square feet, the Ordinance will require that comparable amount of square footage be placed in open space.

Within any condominium development, children's play facilities would be prohibited. (Textual Statement 16)

Age Restriction:

Should any housing units be designed for occupancy by seniors, proffered conditions require that such units be grouped together and identified on site and subdivision plans in an effort to accurately track the impacts on capital facilities. (Proffered Condition 6)

Access to Spring Trace and Cameron Bay Subdivisions:

Holly View Parkway and Holly Bark Drive, which serve the Spring Trace Subdivision, and Cameron Bay Drive, which serves existing and proposed sections of Cameron Bay Subdivision, are recorded or tentatively approved to the eastern and western limits of the subject property. Should these rights of way be extended to provide sole access to a portion of the proposed development, lot size and density compatibility with lots in these portions of Spring Trace and Cameron Bay Subdivisions would need to be addressed. The applicant has proffered that no lots within the proposed development will have their sole access through these adjacent developments thereby eliminating the need to address this compatibility issue. (Proffered Condition 8)

Street Connectivity:

An exception to the “Residential Subdivision Connectivity Policy” is requested so as to preclude any road connection to Quailwood Road. In addition to promoting fire and emergency services safety, subdivision road connections provide interconnectivity between developments thereby reducing congestion along collector and arterial roads and providing a convenient and safe access to neighboring properties.

The “Residential Subdivision Connectivity Policy” allows the Board, through the Commission’s recommendation, to waive the requirement for streets in new subdivisions to connect to adjacent public streets that are designed as local streets, residential collectors and thoroughfare streets. Staff must evaluate this waiver based upon three (3) criteria: (1) there must be a sufficient number of other stub streets to adequately disperse traffic and not cause a concentrated use of any one (1) stub street; or (2) the connection to a particular stub will cause concentrated traffic at that location; and (3) the projected traffic volume on any one (1) local street within an existing subdivision exceed 1,500 vehicle trips per day.

Without additional design information relative to road layout, staff cannot determine if the criteria for granting such a waiver can be met. Therefore, it is recommended that consideration of this waiver be evaluated during the plans review process when more detail is available.

## CONCLUSIONS

The proposed zoning and land uses conform to the Upper Swift Creek Plan which suggests the property is appropriate for single family residential use of 2.2 units per acre or less. The proffered conditions adequately address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan. Specifically, the need for roads, is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program, and the impact of this development is discussed herein. The proffered conditions mitigate the impact on these facilities, thereby insuring adequate service levels are maintained and protecting the health, safety and welfare of County citizens.

The application fails to address connectivity to Quailwood Road per the Board's adopted "Residential Subdivision Connectivity Policy", as discussed herein. Evaluation of the Policy criteria for granting such relief necessitates design detail that can best be provided through the subdivision review process.

Given these considerations, approval of the rezoning (Request I) and denial of the waiver to street connectivity requirements (Request II) is recommended.

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## CASE HISTORY

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Planning Commission Meeting (4/18/06):

On their own motion, the Commission deferred this case to May 16, 2006.

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Staff (4/19/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than April 24, 2006, for consideration at the Commission's May 16, 2006, public hearing.

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Applicant (4/20/06):

The application was amended to request a waiver to the "Residential Subdivision Connectivity Policy" relative to access to Quailwood Road. Proffered conditions were added and amended.

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Planning Commission Meeting (5/16/06):

On their motion, the Commission deferred this case to June 20, 2006.

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Staff (5/17/06):

The applicant was advised in writing that any significant new or revised information should be submitted no later than May 22, 2006, for consideration at the Commission's June 20, 2006, public hearing.

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Applicant (6/7/06 and 6/9/06):

Revised proffered conditions were submitted.

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Planning Commission Meeting (6/19/06):

The applicant did not accept staff's recommendation but did accept the Planning Commission's recommendation. There was opposition present. Concerns were expressed relative to the appropriateness of use, increased traffic volumes, lack of buffers, density, schools and environmental impacts and road improvements.

Mr. Gecker expressed concerns relative to the proposed density of the development and the potential burden on the existing infrastructure, to include roads and schools.

On motion of Mr. Bass, seconded by Mr. Gulley, the Commission recommended approval and acceptance of the proffered conditions on pages 2 through 6.

AYES: Messrs: Wilson, Bass, Gulley and Litton.

NAY: Mr. Gecker.

On motion of Mr. Bass, seconded by Mr. Gulley, the Commission recommended approval of relief to street access requirements.

AYES: Unanimous.

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Board of Supervisors' Meeting (7/26/06):

At the request of the applicant, the Board deferred this case to August 23, 2006.

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Staff (7/27/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than August 1, 2006, for consideration at the Board's August 23, 2006, public hearing.

Also, the applicant was advised that a \$500.00 deferral fee must be paid prior to the Board's public hearing.

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Applicant (8/2/06):

The deferral fee was paid.

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Board of Supervisors' Meeting (8/23/06):

At the request of the applicant, the Board deferred this request to October 25 2006.

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Staff (8/24/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than August 29, 2006, for consideration at the Board's October 25, 2006, public hearing.

Also, the applicant was advised that a \$250.00 deferral fee must be paid prior to the Board's public hearing.

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Applicant (9/6/06):

The deferral fee was paid.

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Staff (9/22/06):

To date, no new information has been submitted.

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Board of Supervisors' Meeting (10/25/06):

At the request of the applicant, the Board deferred the case to December 13, 2006.

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Staff (11/9/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than November 14, 2006, for consideration at the Board's December 13, 2006, public hearing.

The applicant was also advised that a \$250.00 deferral fee was due.

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Applicant (11/16/06):

The deferral fee was paid.

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Staff (11/22/06):

Staff erroneously deferred this case for the Board's November public hearing.

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Staff (11/22/06):

To date, no new information has been submitted.

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Board of Supervisors' Meeting (12/13/06):

On their own motion, the Board of Supervisors' remanded this case to the Planning Commission.

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Staff (12/15/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than December 18, 2006, for consideration at the Commission's February 20, 2007, public hearing.

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Staff (1/24/07):

To date, no new information has been submitted.

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Planning Commission Meeting (2/20/07):

On their motion, the Commission deferred this case to April 17, 2007.



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Staff (2/21/07):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than February 26, 2007, for consideration at the Commission's April 17, 2007, public hearing.

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Applicant (2/21/07 and 3/20/07):

Revised proffers, textual statements and new exhibits were submitted.

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Applicant (3/22/07 and 3/29/07):

Revised proffered conditions were submitted.

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Planning Commission Meeting (4/19/07):

The applicant did not accept the recommendation. There was opposition present. Concerns were expressed relative to increased traffic volumes and lack of school and other public facility infrastructure. Mr. Bass noted that this case provided a unique opportunity to build thoroughfare roads up front; that no connection should be made to Quailwood Road; and that new schools in the Capital Improvements Program would provide relief to the existing school infrastructure.

A motion by Mr. Bass to approve the request failed for lack of a second.

Mr. Gecker noted that the proffers permitted the construction of 200 dwellings prior to construction of the Thoroughfare Road which may not solve the transportation problem.

Messrs. Gecker, Gulley, Litton and Wilson indicated support for use of the cash proffer for bridge construction, but not for the Thoroughfare Road. Messrs. Litton and Wilson suggested deferral so that the applicant could modify the proffers, accordingly.

At the request of the applicant, the Commission deferred this case to May 15, 2007.

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Staff (4/20/07):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than April 23, 2007, for consideration at the Commission's May 15, 2007, public hearing.

Also, the applicant was advised that a \$500.00 deferral fee must be paid prior to the Commission's public hearing.

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Applicant (4/26/07 and 5/2/07):

Revised proffered conditions were submitted addressing transportation improvements and credits for construction of the Swift Creek Bridge.

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Applicant (5/3/07):

The deferral fee was paid.

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Planning Commission Meeting (5/15/07):

The applicant accepted the Planning Commission's recommendation. There was opposition present expressing concerns relative to the impact on roads, schools and the public utilities system. There was support for waiving the requirement for street connections to Quailwood Road.

On motion of Mr. Bass, seconded by Mr. Wilson, the Commission recommended approval of rezoning and Conditional Use Planned Development and acceptance of the proffered conditions on pages 2 through 6.

AYES: Messrs. Gecker, Gulley, Bass, Litton and Wilson.

On motion of Mr. Bass, seconded by Mr. Wilson, the Commission recommended approval of a waiver to street connectivity requirements to Quailwood Road.

AYES: Messrs. Gecker, Gulley, Bass, Litton and Wilson.

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The Board of Supervisors, on Wednesday, June 27, 2007, beginning at 6:30 p.m., will take under consideration this request.

## TEXTUAL STATEMENT

March 19, 2007

This is a request to rezone 220.2 acres of the Property (Tax IDs 732-672-9726 and 733-673-8753) under consideration to R-12 with a Conditional Use Planned Development (CUPD) that will permit development of a mixed use, planned community including single family residences, condominiums, and cluster homes. Except as qualified herein, uses permitted in the Residential (R- 12) District and active and passive recreation uses shall be permitted throughout the property. In addition, the following uses as more fully defined below shall also be permitted.

### APPLICABLE TO ALL

1. Mixing of Uses. Within the Property there shall be no “mixing” of uses (e.g., if the Property is to be developed for condominiums, all of the Property shall be developed as condominiums, or if the Property is developed for Residential (R-12) uses, all of the Property shall be developed for Residential (R-12) uses). Provided, however, the mixing of uses may be permitted if a conceptual plan is submitted for review and approval and the conceptual plan addresses land use transitions and compatibility between uses within the Property itself as well as with adjacent Properties. Consideration of land use compatibility and transitions may include, but not necessarily be limited to, the exact location of uses, buffers, and site design. Such conceptual plan shall be approved by either the Planning Commission or the Planning Department, at the election of the developer, and such review shall be subject to appeal in accordance with provisions of the Zoning Ordinance for site plan approval.
2. Common Areas. Common areas and ownership of property shall be regulated by Section 19-559 of the County Zoning Ordinance.

### APPLICABLE TO CONDOMINIUMS AND CLUSTER HOMES

Condominiums shall meet the following requirements:

3. Number of Units Per Building. No more than ten (10) dwelling units shall be permitted in any one building.
4. Density. The overall density shall not exceed six (6) dwelling units per gross acre.
5. Lot Coverage. All buildings, including accessory buildings, shall not cover more than forty (40) percent of the Tract or area devoted to the condominium development.
6. Building Height. The maximum height of all buildings and structures shall be three (3) stories or forty (40) feet, whichever is less.
7. Architectural Appearance. The architectural appearance and materials of buildings

containing not more than four (4) units shall be similar to the elevations attached as Exhibits A, B, O, P and Q and employ the following materials: brick veneer, composition siding, or vinyl siding having a minimum thickness of 0.042 mils, or a combination of the foregoing, and 20 year asphalt shingles, or shall be of at least similar quality, as determined by the Planning Director at time of site plan review. The architectural appearance and materials of buildings containing more than four (4) units shall be similar to the elevations attached Exhibits C, D, E, O, P and Q and employ the following materials: brick veneer, composition siding, or vinyl siding having a minimum thickness of 0.042 mils, or a combination of the foregoing, and 20 year asphalt shingles, or shall be of at least similar quality, as determined by the Planning Director at time of site plan review.

8. Building Setbacks from Roads and Driveways. All structures shall be set back a minimum of ten (10) feet from interior roads and driveways, provided that no setback shall be required from driveways that serve garages or parking spaces of individual dwelling units and do not provide general circulation within the condominium development ("Individual Driveways"). All structures shall be set back at least fifteen (15) feet from any parking space and a minimum of fifty (50) feet from the ultimate right of way of any collector road external to the condominium development.
9. Building Setbacks from Perimeter of Tract. All structures shall be setback a minimum of fifty (50) feet from the perimeter of the area devoted to condominium development. All perimeter yards shall be planted per the requirements of Perimeter Landscaping C of the Zoning Ordinance.
10. Distance Between Buildings. The minimum distance between buildings shall be thirty (30) feet.
11. Driveway and Parking Setbacks. All driveways and parking areas shall be setback a minimum of fifteen (15) feet from the right-of-way of any existing or proposed right-of-way except that the setback adjacent to any collector road external to the condominium development shall be fifty (50) feet.
12. Sidewalks. Sidewalks shall be provided that facilitate pedestrian access within the overall development, to the recreational areas serving the development, and to the overall project. The exact location and design of the sidewalks shall be determined by the County at the time of site plan review; provided, however, that, unless otherwise approved by the Planning Director at time of site plan approval upon a determination that an alternative system will accomplish the spirit and intent of this requirement, sidewalks shall be installed on those portions of both sides of all roads that have condominiums fronting the road, but not along Individual Driveways.
13. Curb and Gutter. Roads, driveways (with the exception of Individual Driveways), and parking areas shall have concrete curbs and gutters unless it is determined at the time of site plan review that the curbs and gutters are not necessary to effect proper drainage or to

control traffic.

14. Driveway Width. Driveways shall have a minimum pavement width of twenty four (24) feet, provided that driveways that provide the primary access directly to a public road shall have a minimum pavement width of thirty (30) feet. Individual Driveways serving not more than four (4) dwellings shall have a minimum pavement width of seventeen (17) feet; provided, however, the pavement width of any driveway designated as a fire lane in connection with site plan review shall not be less than twenty (20) feet.
15. Recreation Area. A minimum of one and one-half (1.5) acres included within, or conveniently accessible to, each condominium development shall be provided for suitable active and passive outdoor recreational use by the occupants. A minimum of 0.75 acres of open space/recreation area shall be located and positioned to provide a “focal point” as one enters each condominium development. Part of this area shall be “hardscaped” and have benches and other amenities that accommodate and facilitate outdoor gatherings. This area shall be developed concurrently with the development of the first phase of each condominium development, and its exact design and location approved at the time of site plan review.
16. Restriction on Children’s Play Facilities. The common area recreational amenities shall not include playground equipment, play fields or other facilities primarily associated with children’s play. Adult facilities including, but not limited to, swimming pools, putting greens or shuffleboard may be permitted.
17. Street Trees. Street trees shall be planted or retained along each side of roads and driveways except for Individual Driveways. The exact spacing, species and size shall be approved at the time of site plan review.
18. Buffer. A fifty (50) foot buffer shall be maintained adjacent to any public road which is a major arterial, and a thirty-five (35) foot buffer shall be maintained adjacent to any public road that is an internal collector road. Such buffers shall comply with the requirements of Section 19-520 through 19-522 of the Zoning Ordinance and may be inclusive of the Perimeter Landscape requirements identified in Condition 9. At the time of site plan review, the width of this buffer may be modified if it is determined that adequate landscaping or other treatment to minimize the impact of adjacent roads on residences can be accomplished in a lesser width. The exact treatment of the buffer area shall be approved at the time of site plan review. This buffer area shall be maintained as common open space.
19. Garages. Any front-loaded garages shall be located no closer to the street than the front façade of the dwelling unit.

Cluster Homes – Single family detached cluster homes shall meet the following requirements:

20. Lot Size. The minimum lot size shall be as follows: a fifty (50) foot minimum lot width; and a six thousand (6,000) square foot minimum lot area.

21. Density. The overall density within each tract or part of a tract containing cluster homes shall not exceed six (6) units per gross acre.
22. Architectural Appearance. The architectural appearance and materials of cluster homes shall be similar to the elevations attached as Exhibits F through N, which depict vinyl siding and twenty year fiberglass shingles, or shall be of at least similar quality, as determined by the Planning Director at the time of tentative subdivision review.
23. Front, Corner, Side and Rear Yard. For principal structures, the front yard shall be a minimum of ten (10) feet in depth, to include porches or other attachments. Side yards shall be a minimum of five (5) feet in width. Corner side yards shall be a minimum of twenty-five (25) feet. Rear yards shall be a minimum of twenty-five (25) feet in depth.
24. Sidewalks. Sidewalks shall be provided that facilitate pedestrian access within the Development, to the recreational areas serving the cluster home development, and to the overall project. The exact location and design of the sidewalks shall be determined by the County at the time of tentative subdivision review; provided, however, that, unless otherwise approved by the Planning Commission at time of subdivision review upon a determination that an alternative system will accomplish the spirit and intent of this requirement, sidewalks shall be installed on those portions of both sides of all roads that have cluster homes fronting on the road.
25. Buffers. Buffers required by the Subdivision Ordinance along roads shall be located within recorded open space.
26. Paved Driveways. All dwelling units shall have paved individual driveways. The exact treatment shall be approved at the time of tentative subdivision plan review.
27. Focal Point. A minimum of 0.75 acres of open space shall be located and positioned to provide a “focal point” as one enters each cluster home development. Part of this area shall be “hardscaped” and have benches and other amenities that accommodate and facilitate outdoor gatherings. This area shall be developed concurrently with the development of the first phase of each cluster home development, and its exact design and location shall be approved at the time of tentative subdivision review.
28. Garages. Any front-loaded garages shall be located no closer to the street than the front façade of the dwelling unit.
29. Street Trees. Street trees shall be planted or retained along each side of roads and driveways except for Individual Driveways. The exact spacing, species and size shall be approved at the time of tentative subdivision plan review.

#### APPLICABLE TO RESIDENTIAL R-12

All dwellings other than Condominiums and Cluster Homes shall meet the requirements of the

Residential (R-12) District as well as the following requirements:

30. Minimum Square Footage for Single Family Dwellings. With the exception of Cluster Homes or Condominiums, the minimum gross floor area for single family detached homes shall be as follows:

1 story	1,700 square feet;
More than 1 story	2,000 square feet;

31. Recreation Areas. At the election of the developer, active and passive recreation areas may be provided. Such recreation areas shall be subject to the following requirements:

- a. With the exception of playground areas which accommodate swings, jungle gyms, or similar facilities and tennis courts, all outdoor play fields, swimming pools and similar active recreational areas shall be located a minimum of one hundred (100) feet from adjacent properties zoned or designated on the County's Comprehensive Plan for residential use, a minimum of one hundred (100) feet from any existing or proposed single family residential lot line, and a minimum of fifty (50) feet from any existing or proposed road.
- b. Within the one hundred (100) and fifty (50) foot setbacks, a fifty (50) foot buffer shall be provided along the perimeter of all active recreational facilities except where adjacent to any existing or proposed road. This buffer shall conform to the requirements of the Zoning Ordinance for fifty (50) foot buffers.
- c. Any playground areas (i.e. areas accommodating swings, jungle gyms or similar such facilities) and tennis courts shall be located a minimum of forty (40) feet from all property lines. A forty (40) foot buffer shall be provided along the perimeter of these recreational facilities except where adjacent to any existing or proposed roads. This buffer shall conform to the requirements of the Zoning Ordinance for fifty (50) foot buffers.
- d. Nothing within this condition shall prevent development of indoor facilities and/or parking within the one hundred (100) foot setback.
- e. There shall be no outside public address system or speakers.
- f. The maximum height for light posts shall not exceed twenty (20) feet.
- g. The location of all active recreational uses shall be identified in conjunction with the submittal of the first tentative subdivision plan.
- h. In conjunction with the recordation of any lot adjacent to active recreational area(s), such area(s) shall be identified on the record plat along with the proposed recreational uses and required conditions.

32. Covenants. For all properties containing single family detached dwellings (except Cluster Homes and Condominiums), the following Declaration of Restrictions shall be recorded in conjunction with the recordation of any subdivision plat:

THE OWNERS do hereby declare that said property is to be held, owned, conveyed, used and occupied subject to the following restrictive covenants:

- a. An Architectural Review Committee, hereinafter called "ARC" shall be comprised of Robert C. Sowers, his heirs, personal representatives, successors, and assigns, any of which may act. The ARC shall coordinate each residence and lot and shall establish reasonable rules and regulations relating to the procedure for architectural approvals and general guidelines for architectural plans according to the following architectural guidelines:

All plans to be approved prior to commencement of construction on each lot.  
House location to be approved prior to construction.

Roof

Minimum 7/12 pitch  
Minimum 12" overhang  
No uncolored galvanized flashing

Foundation

Brick foundations  
Brick or stone on chimney chases

Dwelling

Main body of house to be a minimum of 30 feet in width  
No single story homes adjacent to each other

Stoops and walks

Brick stoops or painted fir (no salt treated stoops except when approved by ARC)  
Minimum 40 sq. ft.  
Concrete sidewalks  
Painted lattice under front porches - painted risers on steps, painted pickets and painted band on front porches

Siding

Panel shutters on front windows  
Minimum 1 x 6 rake and fascia boards



No T1-11 siding

Landscaping

\$300 allowance for shrubs

White painted mailbox and lamp post consistent throughout subdivision

Builder to leave as many trees as possible over 6 inches at the base

Base

3 color exterior paint except for 2 colors if  
painted white

Satellite Dishes and swimming pool design, location and screening to be approved  
prior to installation.

The ARC reserves the right to modify the above restrictions or any other imposed  
deed restrictions in all or in part without notice. In addition, the ARC reserves the  
right to make special exceptions to these conditions on an individual basis;  
however, any special exception(s) shall not be deemed as waiver of the  
restriction(s) as they may apply in the future.

The ARC reserves the right to disallow construction of architecturally similar  
homes adjacent to each other.

The ARC shall not be liable to any Owner or to any other person on account of  
any claim, liability, damage, or expense suffered or incurred by or threatened  
against an Owner or such other person arising out of or in any way relating to the  
subject matter of any review, acceptances, inspections, permissions, consents, or  
required approvals which must be obtained from the ARC whether given, granted  
or withheld.

- b. No repairs, changes in color, excavations, changes in grade, major landscaping, or  
other work which in any way alters the exterior appearance of any Lot or  
improvement located thereon from its natural or improved state existing on the  
date such Lot was first conveyed in fee by Robert C. Sowers to an owner  
(including clearance of trees and vegetation, driveways, entrance ways, fences,  
mailboxes, and lamp post structures), shall be made or done until the plans,  
specifications, working drawings, and proposals for the same showing the nature,  
kind, shape, type, color, materials, and location of the improvements on the Lot  
and a landscaping plan shall have been submitted to and approved in writing to  
promote harmony of external design and location in relation to surrounding  
structures, topography, and applicable governmental requirements by the ARC.

- c. All easements along road frontage and lot lines as may be shown on any subdivision plat are hereby reserved unto the developer, his personal representatives, heirs, assigns, or agents, for the purpose of drainage or furnishing light, telephone or any other utility to the property.
- d. Lots shall be occupied and used as follows:
  - i. Lots shall be used for private residential purposes only and no building of any kind whatsoever shall be erected or maintained thereon except for:
    - 1. One private dwelling house with each dwelling being designated for occupancy by a single family.
    - 2. Private garages for the sole use of the respective owners of the Lots upon which such garages are erected.
  - ii. A single building for the storage of non-commercial vehicles, boats, equipment, and tools used in maintenance of the Lot upon which erected.
- e. No building shall be located on any Lot nearer to any street or to a side line than is permitted under the applicable local zoning ordinance in effect at the time such building is constructed.
- f. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.
- g. The construction of any structure on a Lot shall be completed within a period of nine (9) months after the beginning of construction. During construction, the Lot shall be maintained in a clean and uncluttered condition, free of unnecessary accumulation of waste and building debris.
- h. It is the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on his Lot. All improvements on each Lot shall be kept in good repair, and, where necessary, painted on a regular basis. No portion of the property shall be used or maintained as a dumping ground for rubbish. Outdoor burning of leaves, trash or other debris shall not be permitted. All trash, garbage, and other waste shall be kept in sanitary containers which shall be surrounded by wooden screening with such screening being approved by the ARC, or otherwise out of sight from the street.
- i. No nuisance or offensive activity shall be permitted or maintained upon any Lot, nor shall any poultry, hogs, rabbits, cattle or other livestock be kept thereon with the exception of dogs, cats or other normal household animals kept as pets thereon in numbers not exceeding those permitted by the law, provided they are not kept,

bred or maintained for any commercial purposes, and must be kept under control of their owner when outside owner's premises, nor constitute a nuisance in the opinion of the ARC, its successors or assigns. No use shall be made of any Lot which will depreciate or adversely affect the surrounding Lots or the property.

- j. Each residence constructed on a Lot shall be connected to a public sewer.
- k. No Lot shall be further subdivided without prior written consent of the ARC. However, the developer hereby expressly reserves for itself, its successors, and assigns, the right to re-subdivide any Lot or Lots shown on any recorded plan of subdivision of the property prior to the delivery of a deed to said Lot or Lots without the prior written consent of any Lot Owner.
- l. Except for emergencies, which emergencies must be proven to the satisfaction of the ARC, no trees with a diameter of six (6) inches or more, measured two (2) feet from the ground, no flowering trees, shrubs, or evergreens may be cleared from any Lot without prior written permission of the ARC. In the event a Lot Owner violates this covenants the Lot Owner will be fined \$25.00 per inch for every such tree removed and it shall be assumed that each tree had a diameter of twelve (12) inches.
- m. No commercially licensed vehicles, motor vehicles, recreational vehicles, boats, disabled vehicles, vehicles without a current state license or state inspection sticker, machinery, or other equipment shall be visible from the street for a period exceeding twenty-four (24) hours. Any screening of such vehicles must be approved by the ARC. This covenant shall not apply to vehicles and equipment used in connection with construction upon Lots, while such construction is in progress, or in connection with the development of the property. It shall be the responsibility of each Owner to construct and maintain suitable and adequate parking space on his Lot and all vehicles shall be parked thereon.
- n. The operation of unlicensed motor bikes, ATV's, and motorcycles on the lots and entrance area shall be subject to regulation by the Owners and may be prohibited entirely.
- o. No external illumination on any Lot shall be of such a character or intensity or so located as to interfere with any other Owners use or enjoyment of his Lot. No neon or flashing lights shall be permitted. All external lighting must be approved as to size and intensity by the ARC.
- p. Except during construction, no signs of any kind shall be displayed to the public view on any lot except:
  - i. One sign not exceeding four (4) square feet in areas used for the purpose

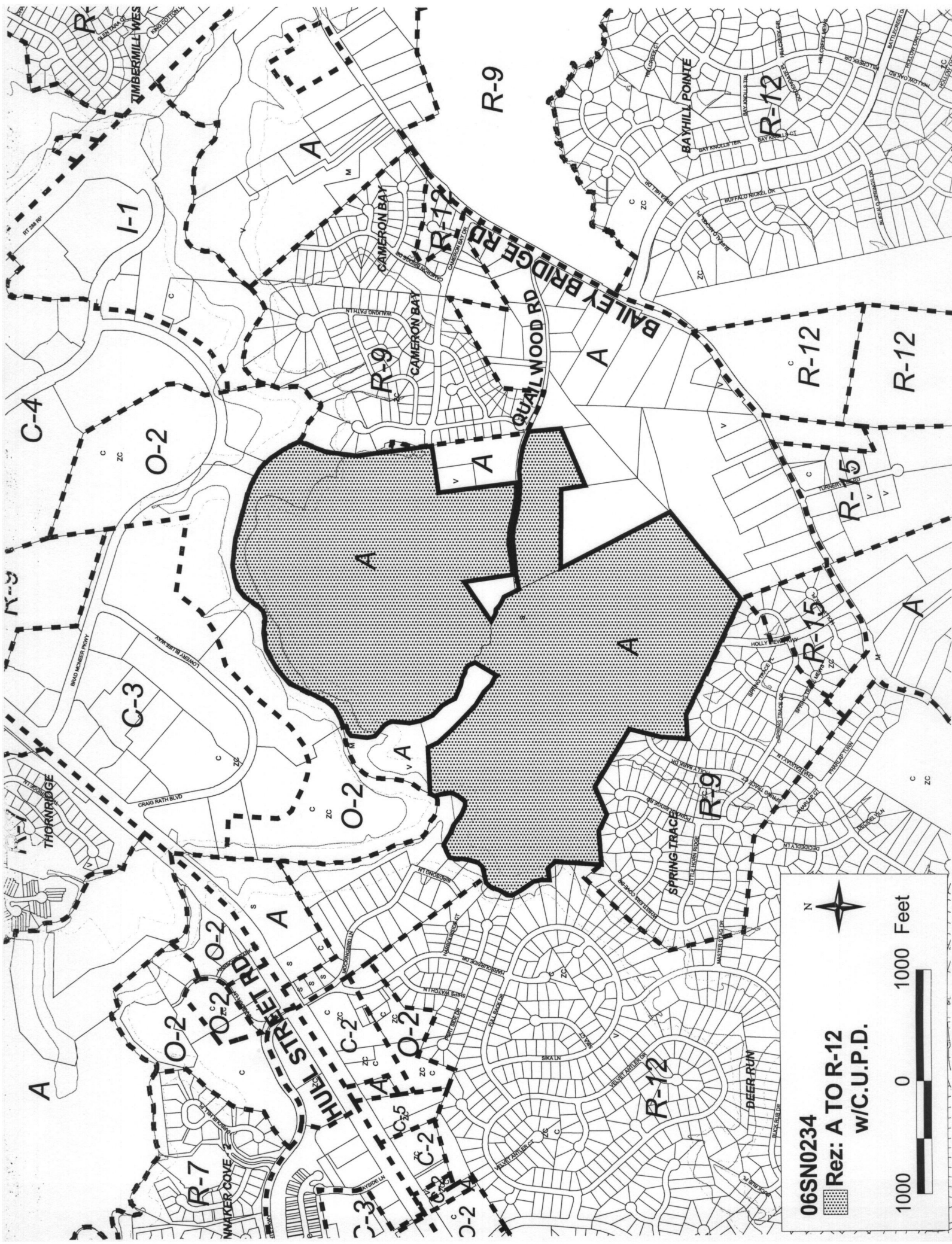
- of advertising the Lot for sale or rent: and
- ii. One sign not exceeding four (4) square feet in area which identifies the resident occupying the Lot, the name of the Lot, or both.
- q. No temporary, portable, or above-ground swimming pools may be erected on any Lot that will be visible from the street.
  - r. Except as otherwise provided by applicable law, no outside antennas, television or otherwise, shall be permitted; provided, however, that until cable television becomes available to the property, exterior television antennas shall be permitted, provided that they do not extend more than five (5) feet past the roof line of any dwelling. No satellite dishes shall be visible from the street.
  - s. No construction shall be permitted without appropriate erosion control so as to prevent the discharge of any soil or other material onto any other Lot or Common Area. The ARC may establish reasonable rules and regulations establishing a maximum percentage of any Lot which may be covered by a building, driveway or other structure.
  - t. No fences or walls not constituting a part of a building shall be erected, placed or altered on any Lot nearer to any street than the minimum exterior setback line, but in no case shall it extend further forward than the rear of the house except with the approval of the ARC.
  - u. No shrubs, trees, fences or structures of any type shall be erected which may partially or fully block vehicular sight distance, as set forth in the Virginia Highway Department regulations, on any roadway.
  - v. No lot owner shall disturb or siltate shoulders, backslopes, ditches, pavement, curb and gutter, driveway culverts, or any other improvements within the public right-of-way. Each Lot Owner agrees to be responsible for disturbances, damages, and/or siltation caused by themselves, their employees, suppliers, contractors, or others, and shall have fourteen (14) days from the receipt of a letter from the developer and/or the ARC to correct the damage. If a Lot Owner fails to correct the damage in a workmanlike manner, then the developer or its assigns shall have the right to correct the damage and bill the Lot Owner directly on a cost-plus-fifty-percent (50%) basis. If a Lot Owner does not make payment within thirty (30) days of presentation of the bill, a two percent (2%) per month service charge shall be applied to such bill.
  - w. Any one or more of the aforesaid Covenants and Restrictions may be waived, modified, or rescinded, in whole or in part, as to all of the property or any Lot, by written instrument of the ARC.

- x. Invalidation of any of these covenants and conditions, by court adjudication or otherwise shall in no way modify, affect, or invalidate any of the other covenants and conditions contained herein which shall remain in full force and effect.
- y. Each and every covenant and condition herein imposed may be enforced by the undersigned or the owner of any Lot by appropriate proceedings at law or in equity against any party violating or attempting or threatening to violate the same to prevent or rectify such violation and or recover damages therefore. The failure of an owner or the undersigned to bring any such proceeding shall not be considered as a waiver of any rights at law or in equity that any such party may have for past or future violation of any covenant herein contained.
- z. These covenants and conditions are to run with the land and shall be binding upon subsequent owner or owners and all parties claiming through or under such owner or owners for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the Lots has been recorded, revoking said covenants, or agreeing to change said covenants in whole or in part.

DORIS C. CLARKE and  
L. G. HENRY, FAMILY  
LIMITED PARTNERSHIP,  
a Virginia limited partnership

By: \_\_\_\_\_  
James W. Theobald, Attorney-in-Fact  
Date: March 19, 2007

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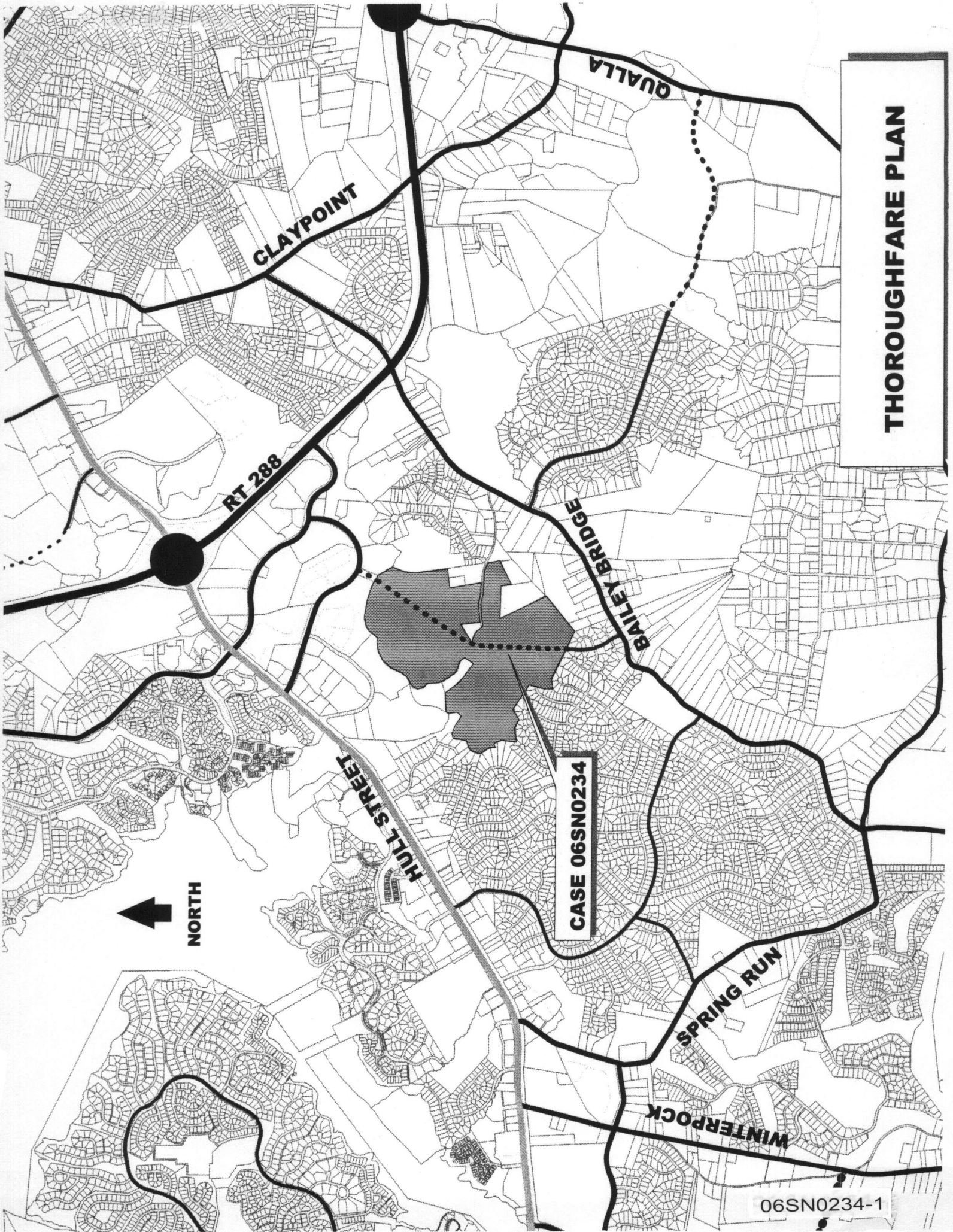
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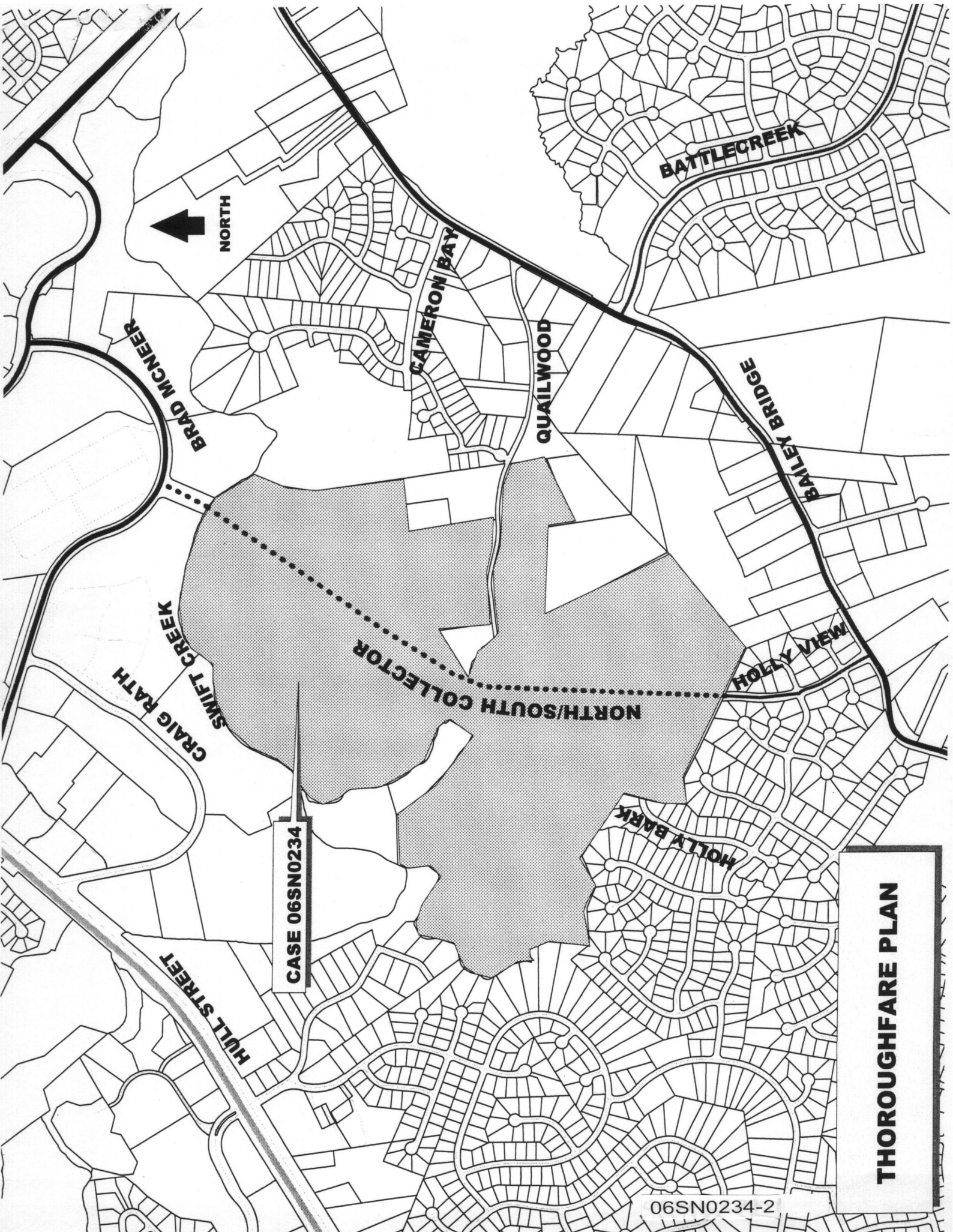


**THOROUGHFARE PLAN**



06SN0234-1

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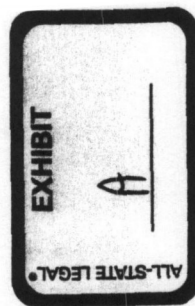
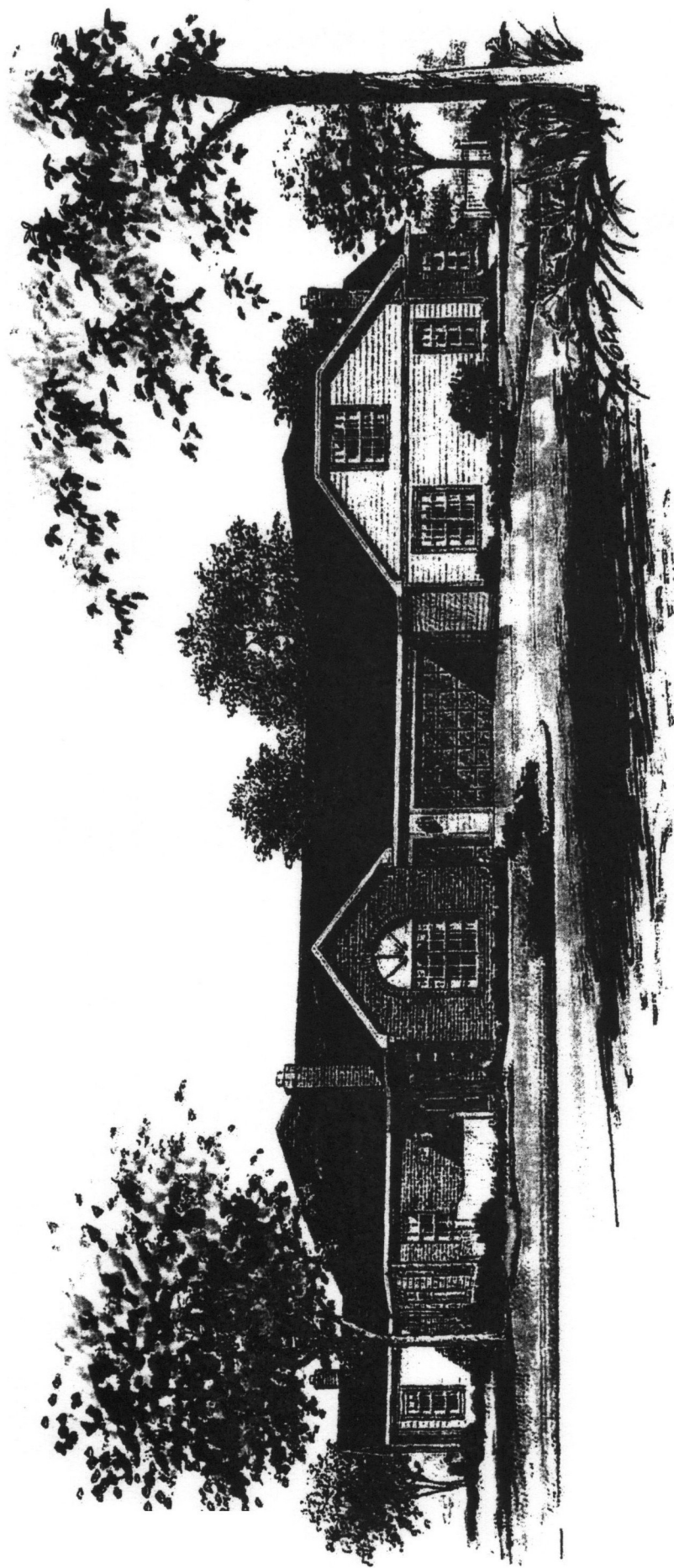
CASE 06SN0234

THOROUGHFARE PLAN

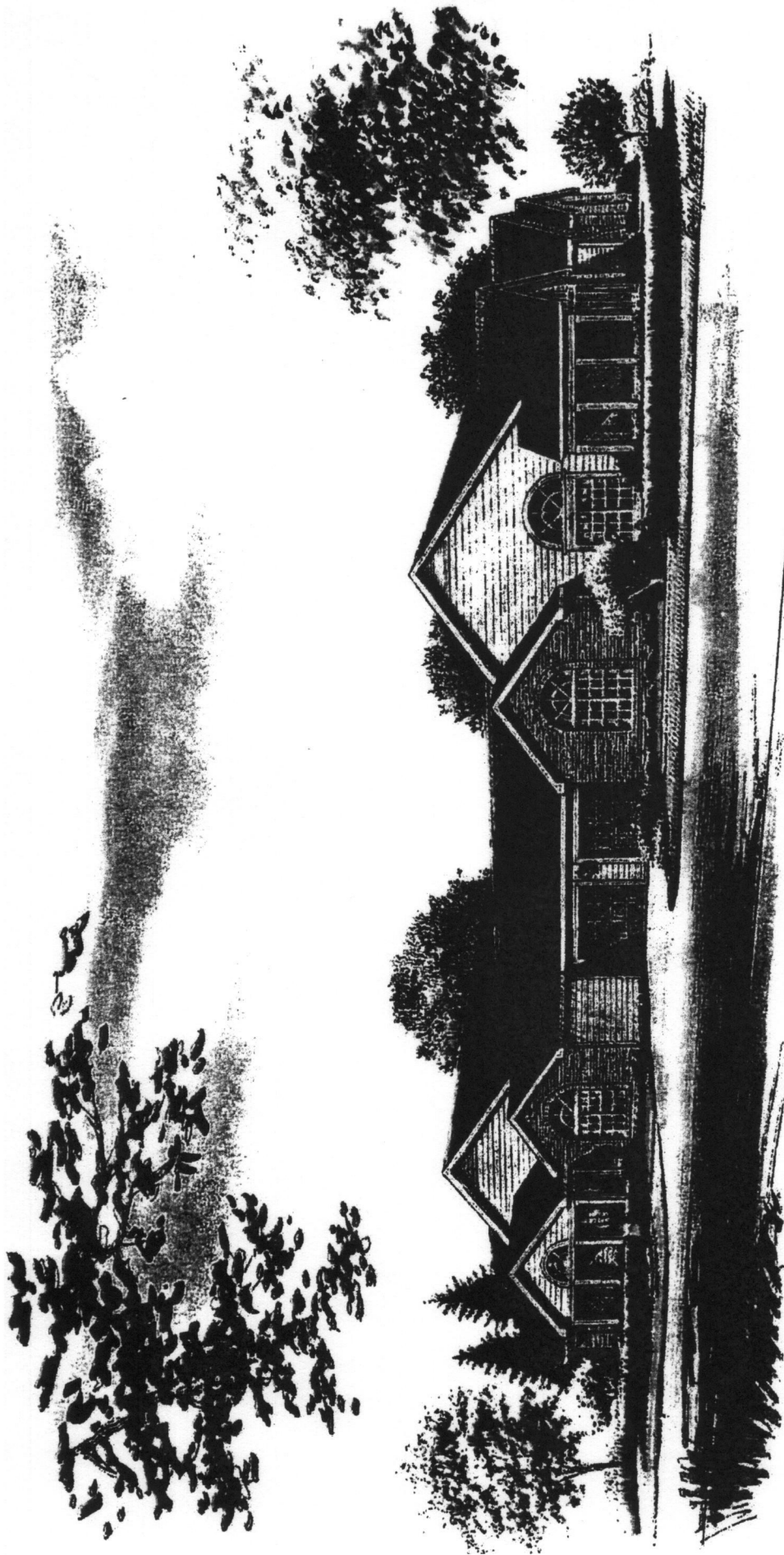
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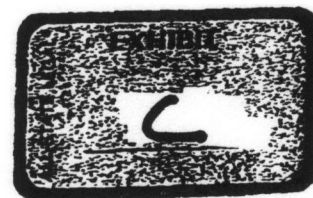
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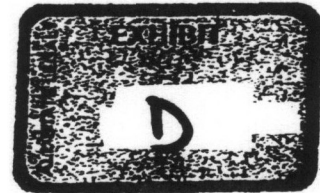
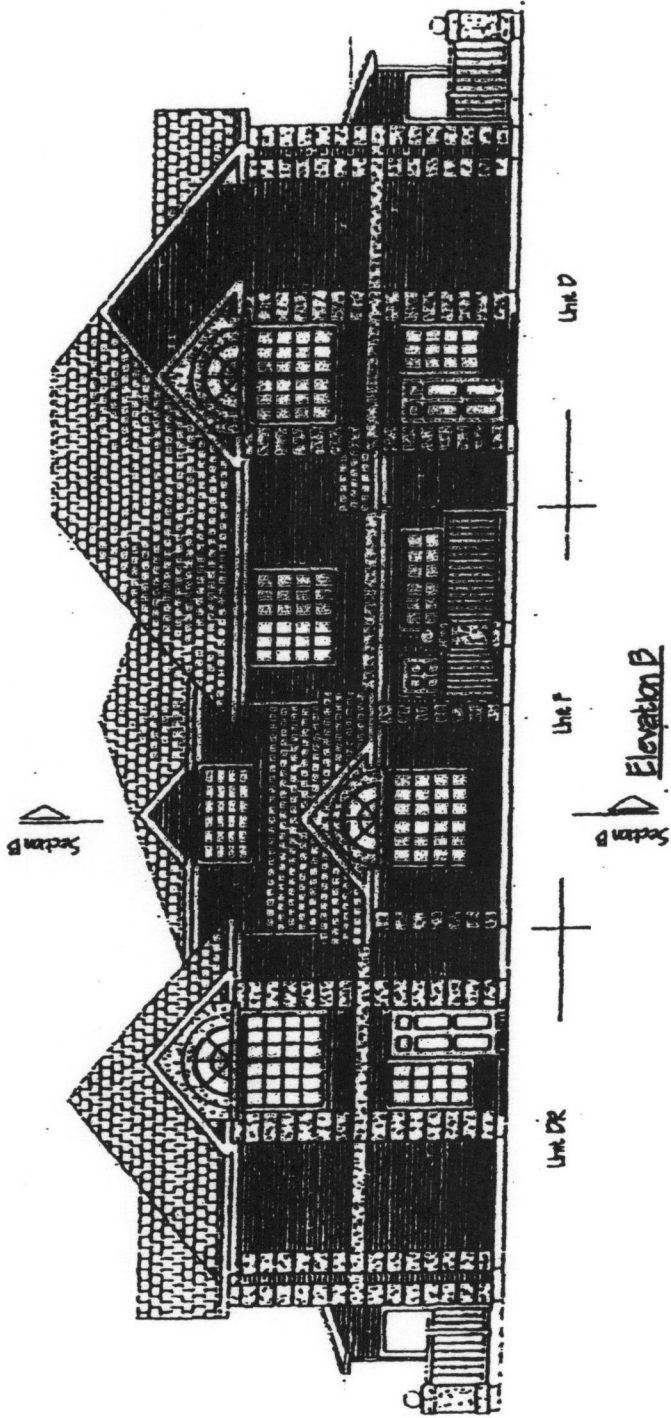
ALL-STATE LEGAL®  
EXHIBIT  
B

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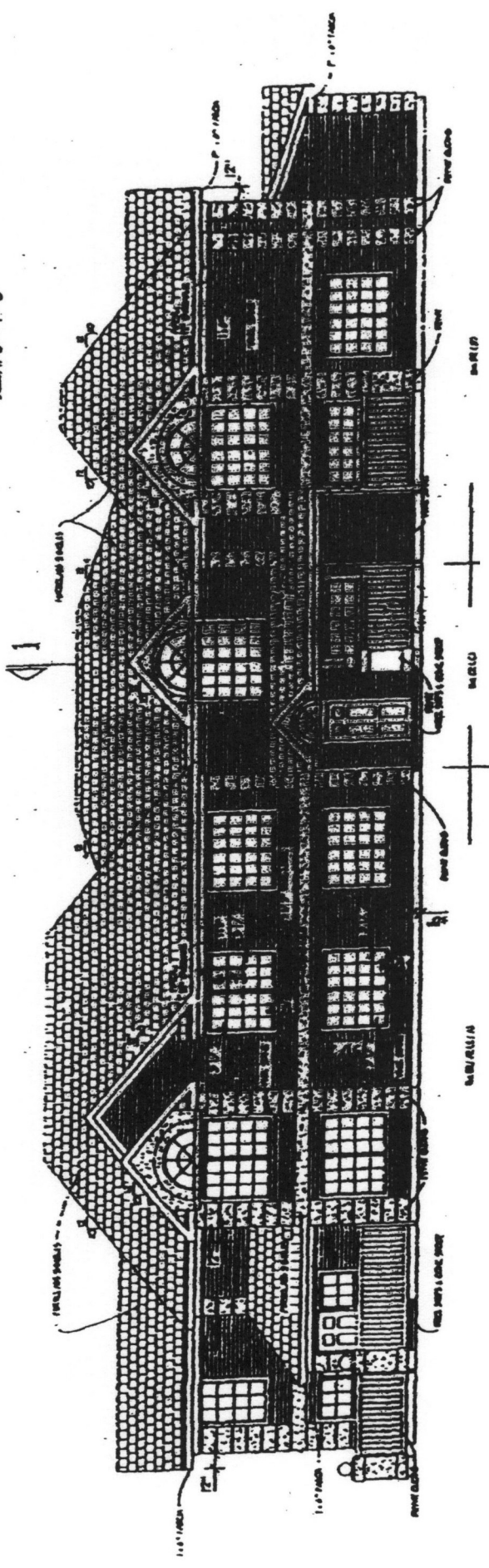


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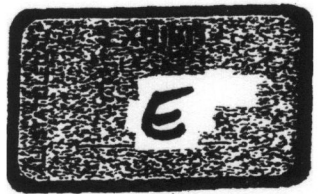


Elev. A

Roof Plan  
Scale: 1/8" = 1'-0"

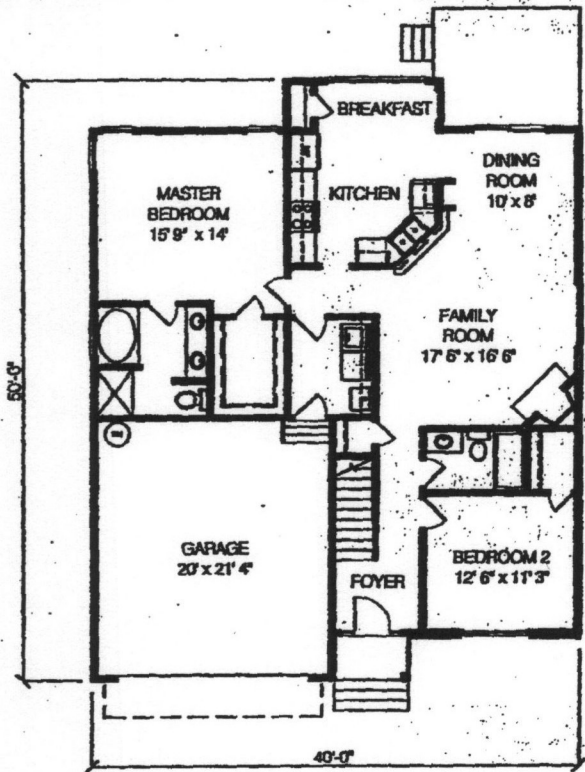


Elevation A

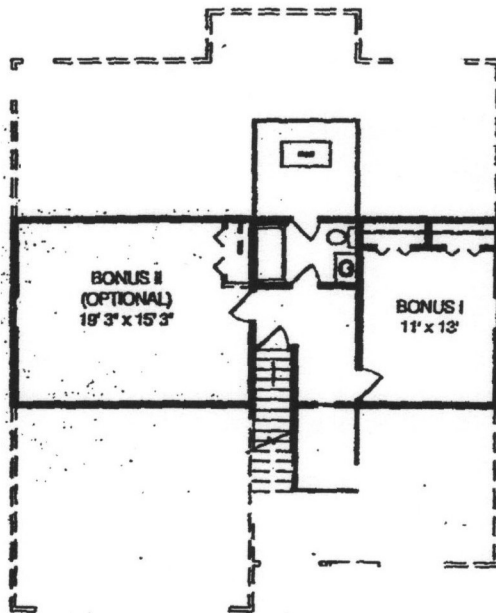


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# "Anne 40-2"



FIRST FLOOR PLAN



SECOND FLOOR PLAN

Exhibit F

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# "Anne 40-3"

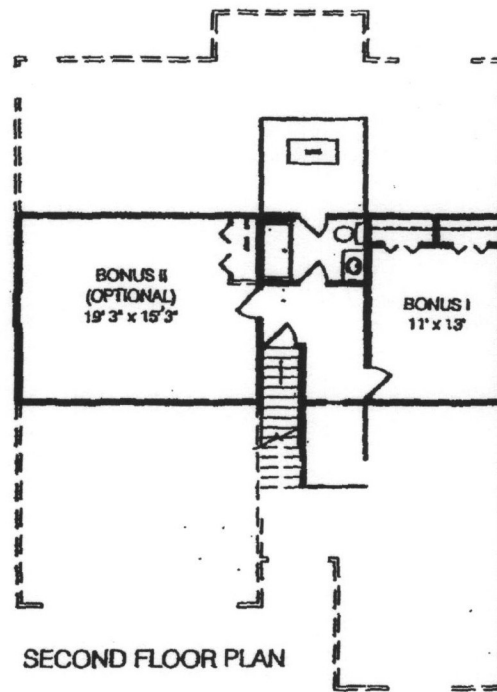
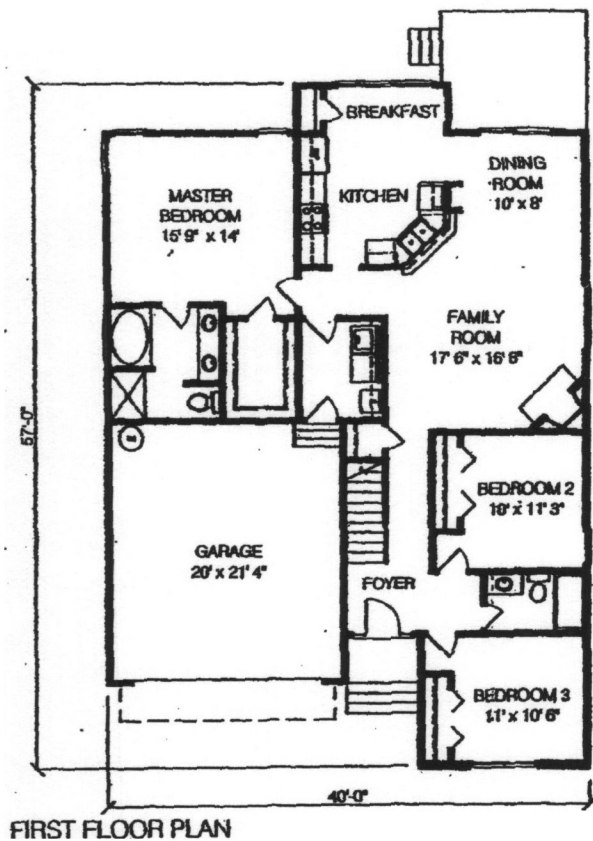
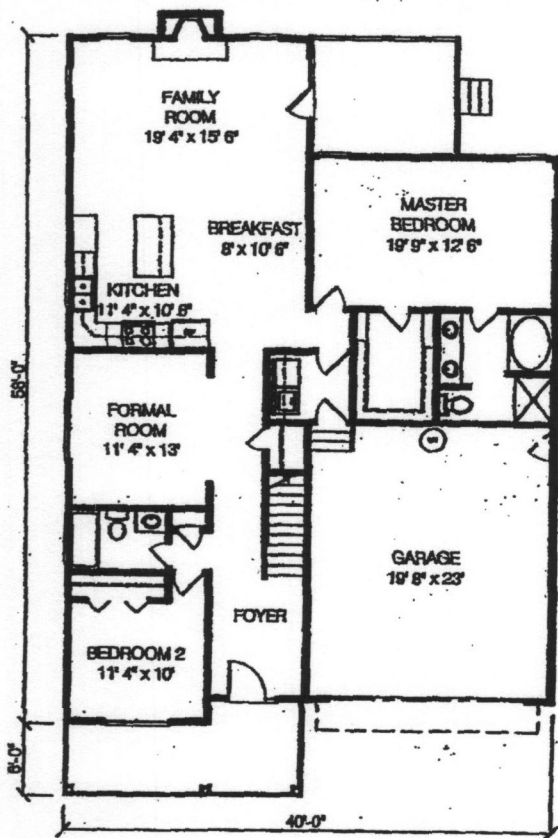
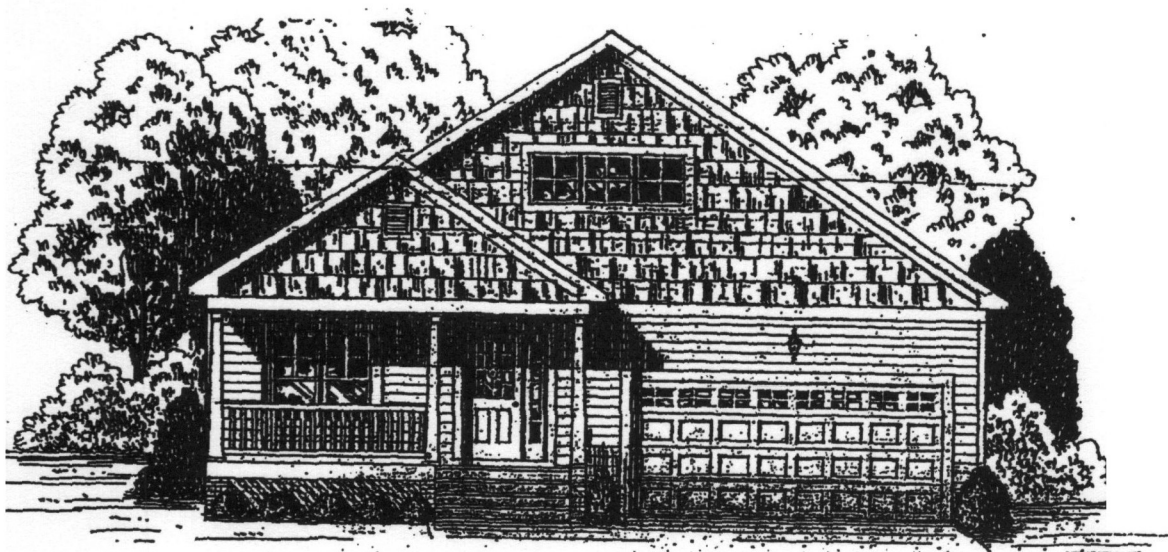


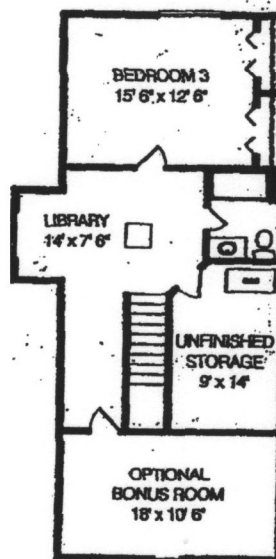
Exhibit A

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# "Ashley"



FIRST FLOOR PLAN



SECOND FLOOR PLAN

Exhibit H

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# "Ashley II"

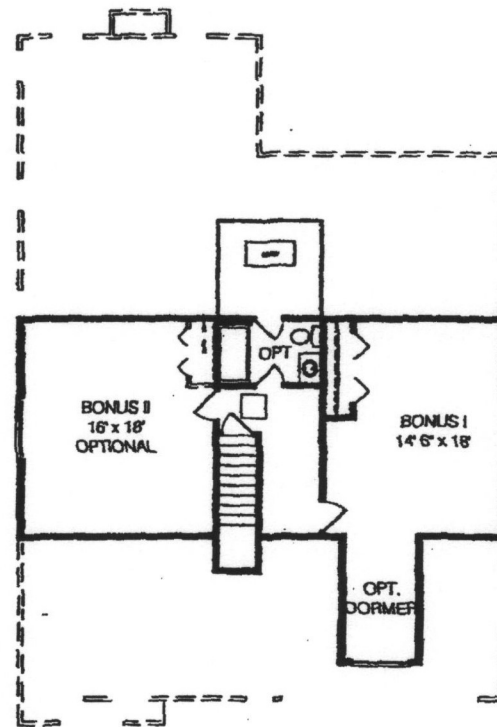
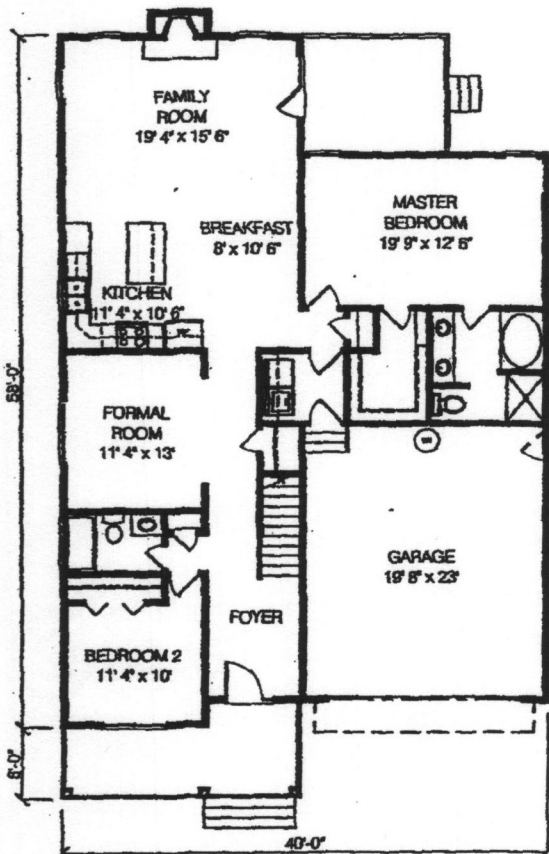


Exhibit I

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# "Bedford" 376-50

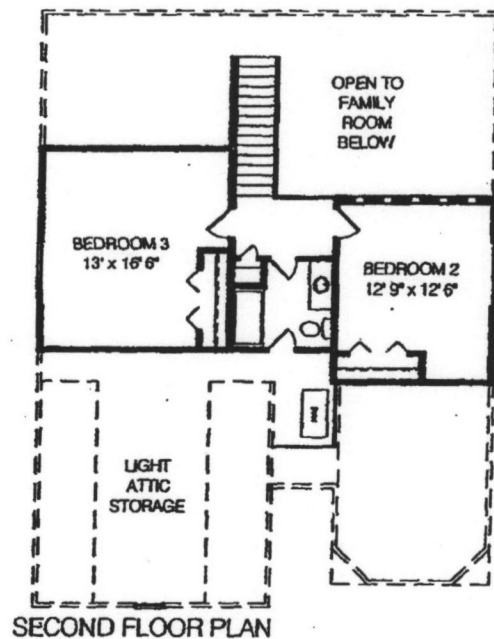
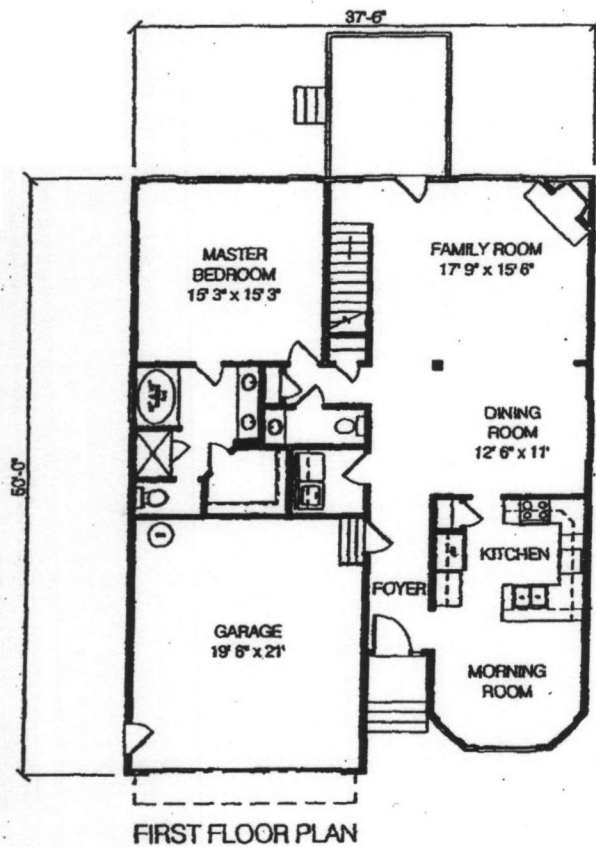
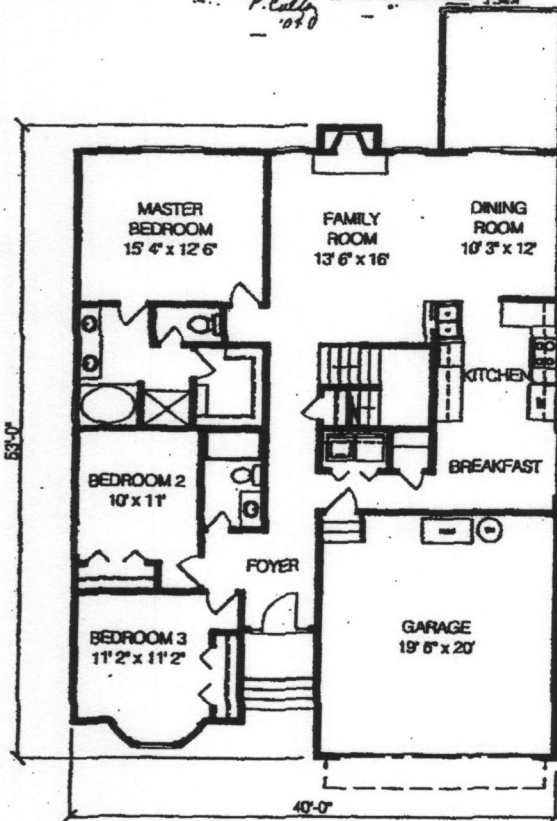


Exhibit J

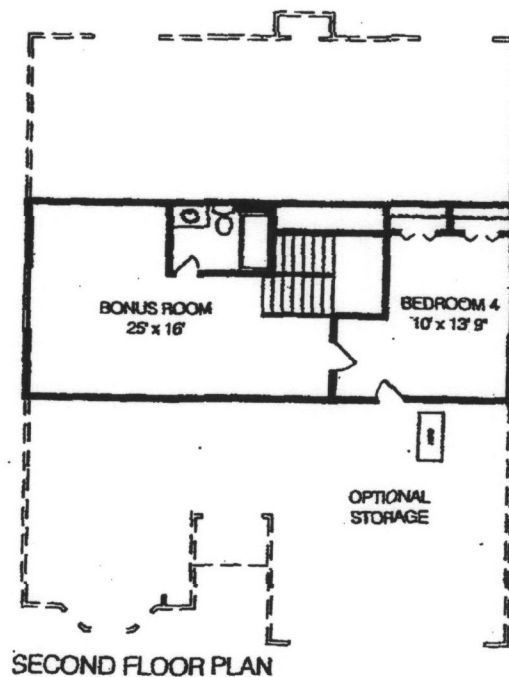
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# "Berringer"



FIRST FLOOR PLAN

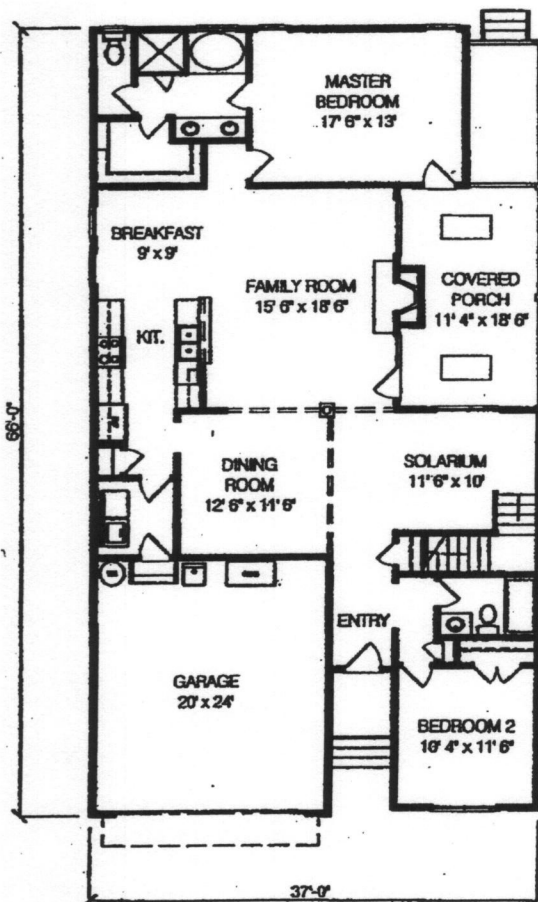


SECOND FLOOR PLAN

Exhibit K

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# "Nickelson II"



FIRST FLOOR PLAN

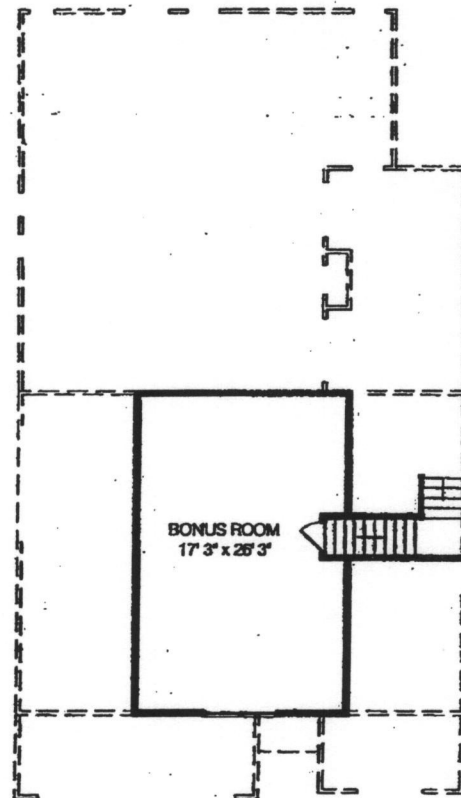
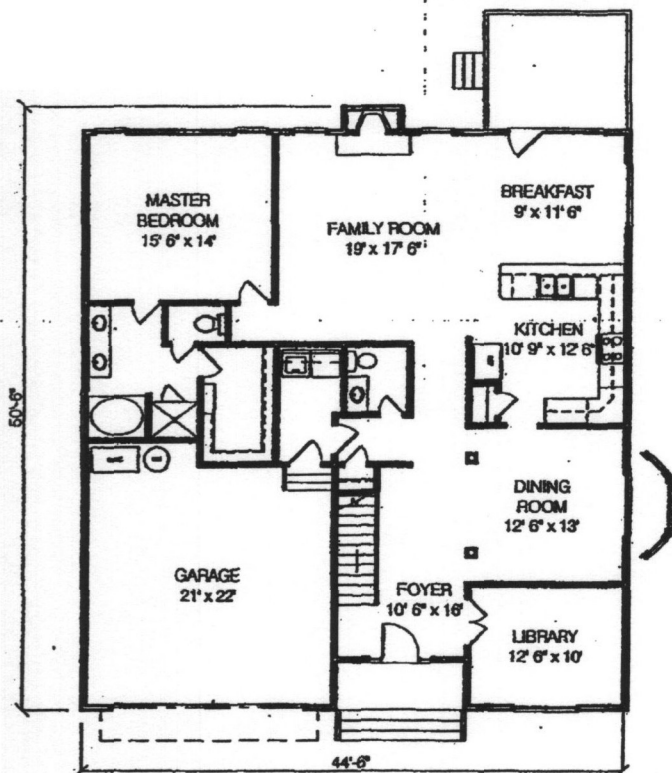


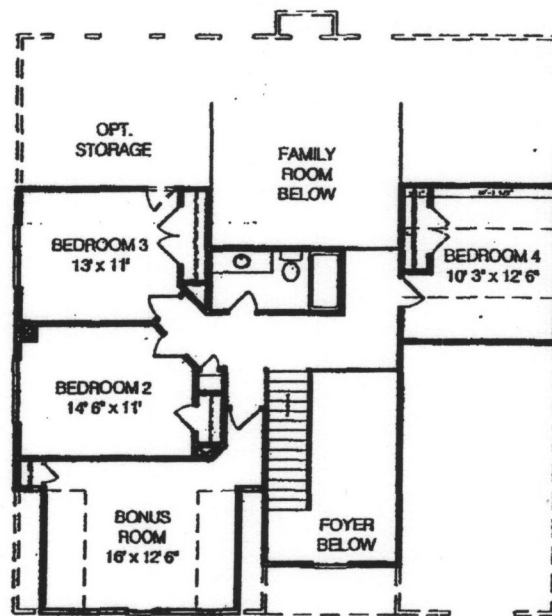
Exhibit L

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# "Raleigh"



FIRST FLOOR PLAN

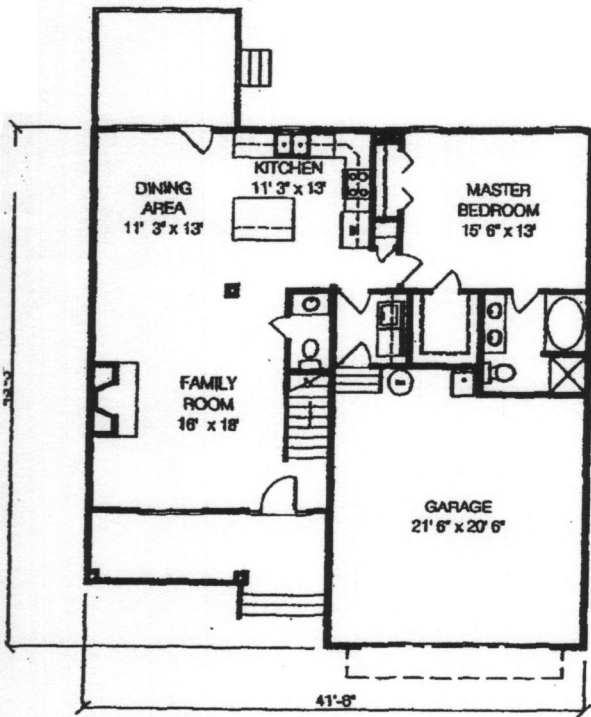


SECOND FLOOR PLAN

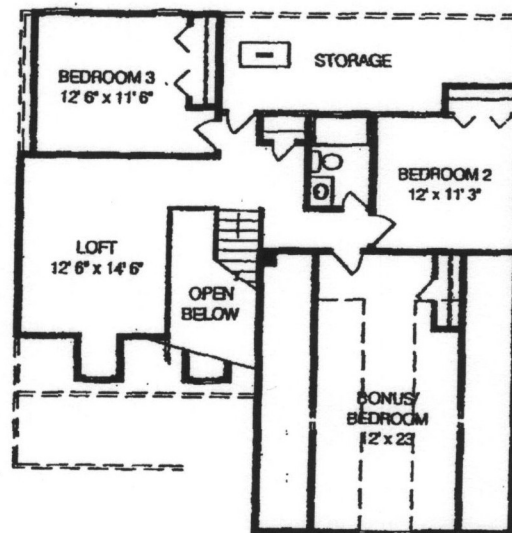
Exhibit M

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# "Wycliffe"



FIRST FLOOR PLAN



SECOND FLOOR PLAN

Exhibit N

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## PROPOSED TOWNHOUSES

6707 FIDELITY DRIVE, WINDHAM, VERMONT 05793-1507

EXHIBIT O

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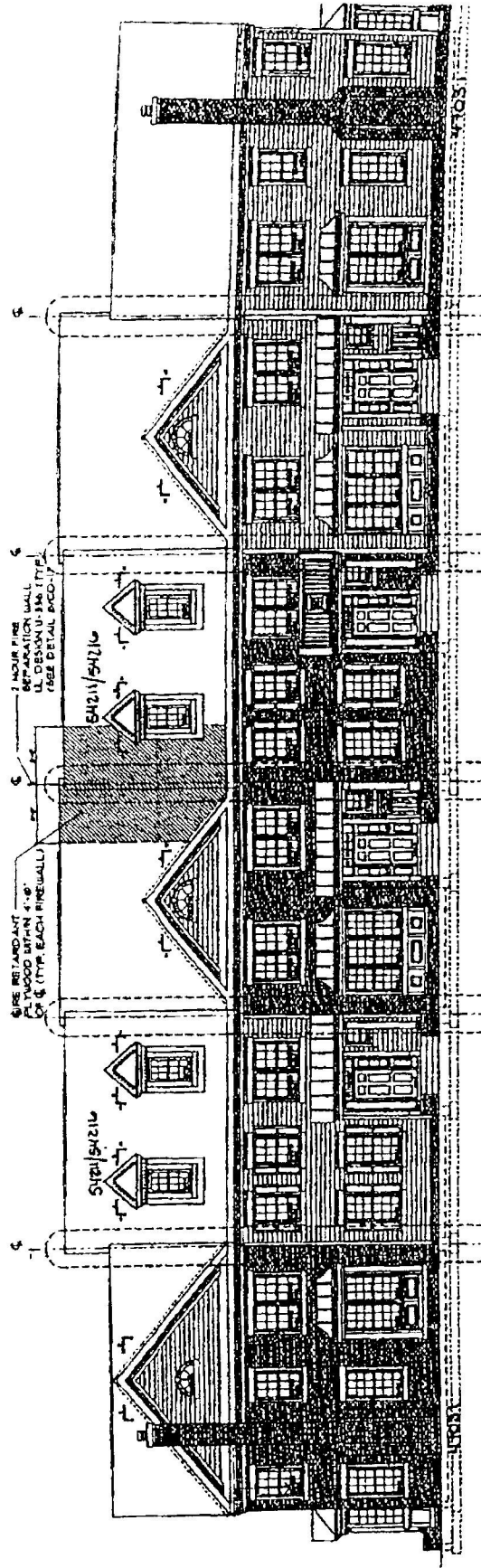


EXHIBIT P

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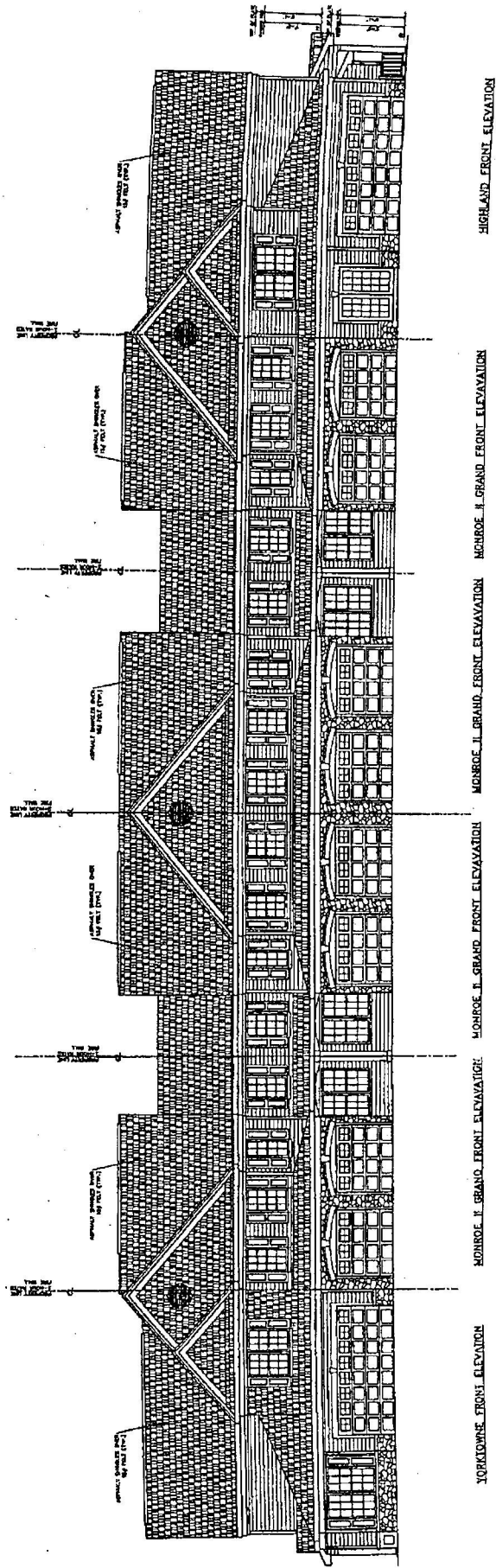


EXHIBIT Q

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